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THE
COMPILED AND REVISED
LAWS
OF THE
TERRITORY OF IDAHO.

OF A GENERAL NATURE PASSED AT, OR CONTINUED IN FORCE BY THE

EIGHTH SESSION
OF THE
LEGISLATIVE ASSEMBLY

[illegible] Curtis.

CONVENED ON THE SEVENTH DAY OF
DECEMBER, A. D. 1874, AT

BOISE CITY.

TOGETHER WITH THE CONSTITUTION OF THE
UNITED STATES, DECLARATION OF INDEPENDENCE
AND ACTS OF CONGRESS CONCERNING THE
TERRITORY.

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MILTON KELLY, TERRITORIAL PRINTER.
1875.

CERTIFICATE.

TERRITORY OF IDAHO,
SECRETARY'S OFFICE,

I do hereby certify that the Laws contained in this printed volume are true and literal copies of the enrolled Laws passed at the Eighth Session of the Legislative Assembly of the Territory of Idaho. convened on the seventh day of December, A. D., 1874, and the Laws previously passed and authorized to be continued in force and printed in this Code of Laws.

In witness, whereof I have hereunto set my hand and affixed the seal of the Territory.

Done at Boise City, this First day of February, A. D., 1876.

E. J. CURTIS,
Secretary of Idaho.

THE

Declaration of Independence.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED.

JULY 4, 1776

Preamble to declaration.

Reasons therefor.

WHEN, in the course of human events, it becomes necessary for one people to disolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of those ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and, accordingly, all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their

JULY 4, 1776 future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former system of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world:—

Grievances. He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation, till his assent should be obtained; and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise—the State remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States—for that purpose obstructing the laws of naturalization of foreigners, refusing to pass others to encourage their migrations hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance.

JULY 4, 1776

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws—giving his assent to their acts of pretended legislation.

For quartering large bodies of troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offenses:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny, already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections among us, and has endeavored to bring, on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

July 4, 1776

In every stage of these oppressions, we have petitioned for redress in the most humble terms. Our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts, by their legislature, to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind: enemies in war; in peace, friends.

Declaration

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world for the rectitude of of our intentions, do, in the name, and by the authority of the good people of these colonies, solemnly publish and declare that these united colonies are, and of right ought to be, FREE AND INDEPENDENT STATES; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain, is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

The foregoing declaration was, by order of congress, engrossed, and signed by the following members:—

JOHN HANCOCK.

NEW HAMPSHIRE.

Josiah Bartlett, William Whipple.
Matthew Thornton,

MASSACHUSETTS BAY.

Samuel Adams, John Adams,
Robert Treat Paine, Eldridge Gerry.

RHODE ISLAND, ETC.

Stephen Hopkins, William Ellery.

CONNECTICUT.

Roger Sherman, Samuel Huntington,
Willam Williams, Oliver Wolcott.

NEW YORK.

William Floyd, Philip Livingston;
Francis Lewis, Lewis Morris.

NEW JERSEY.

Richard Stockton, John Witherspoon,
Francis Hopkinson, John Hart.
Abraham Clark,

PENNSYLVANIA.

Robert Morris, Benjamin Rush,
Benjamin Franklin, John Morton,
George Clymer, James Smith,
George Taylor, James Wilson.
George Ross,

DELAWARE.

Cæsar Rodney, George Read.
Thomas M'Kean,

MARYLAND.

Samuel Chase, William Paca,
Thomas Stone, Chas. Carrol, of Carrollton.

VIRGINIA.

George Wythe, Richard Henry Lee,
Thomas Jefferson, Benjamin Harrison,
Thomas Nelson, Jun., Francis Lightfoot Lee.
Carter Braxton,

NORTH CAROLINA.

William Hooper, Joseph Hewes.
John Penn,

SOUTH CAROLINA.

Edward Butledge, Thomas Hayward, Jun.,
Thomas Lynch, Jun., Arthur Middleton.

GEORGIA.

Button Gwinnett, Lyman Hall.
George Walton,

CONSTITUTION

OF THE

UNITED STATES OF AMERICA.

WE, the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

Preamble.

ARTICLE 1.

Legislative powers, where vested.

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

House of Representatives, how constituted

SECTION 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch ot the State Legislature.

Qualifications of a representative.

No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct taxes, how apportioned.

*Representatives and direct Taxes † shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole

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* Altered by the Fourteenth Amendment. See page 25.

†Direct taxes probably included only those on polls and real estate. 8 Wall. 544.

Number of free Persons, including those bound to Service for a Term of Years, and including Indians not taxed, three-fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Census.

Vacancies to be filled.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

Power of choosing officers; and of impeachment.

The House of Representatives shall choose their Speaker and other Officers; and shall have the sole Power of Impeachment.

Senators, how and by whom chosen.

SECTION 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one vote.

How Classified.

Immediately after they shall be assembled in Consequence of the first Election they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

Vacancies how filled.

Qualifications of a Senator.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

President of Senate, his right to vote.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

Officers of Senate how chosen.

The Senate shall choose their other Officers, and also a President pro tempore, in the Absence of the Vice

President, or when he shall exercise the Office of President of the United States.

Power to try impeachments

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present.

Chief Justice to preside, when.

Sentence

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of Honor, Trust, or Profit, under the United States; but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Times, &c. of holding elections, how prescribed.

SECTION 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the places of choosing Senators.

One Session in each year.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Membership.

SECTION 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Quorum.

Adjournments.

Rules; power to punish or expel.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Journal.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Yeas and Nays.

Time of adjournment, limited, unless, &c.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Compensation.

SECTION 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from

Privileges

Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech, or Debate in either House, they shall not be questioned in any other Place.

Disqualification, in certain cases.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

House to originate all revenue bills

SECTION 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Veto.

Bill may be passed by two-thirds of each House, notwithstanding.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two-thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a Law. But in all such Cases, the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Bill not returned in ten days,

Joint resolutions to be presented to the President for approval.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Powers of Congress.

SECTION 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts, and Excises, to pay the

Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;*

To regulate commerce with foreign Nations, and among the several States,† and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies througout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the Discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

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* Such loans are not taxable by the States. 2 Pet., 449.

† This power extends only over waters whose navigation has a substantial value for commerce. 22 Conn., 183—186. States may authorize the collection of tolls for the improvement of navigable rivers. 12 Conn., 7. 18 Conn., 500

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or officer thereof.*

Provision as to migration or importation of certain persons.

SECTION 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or Duty may be imposed on such Importation, not exceeding ten dollars for each Person.

Habeas corpus.

The Privilege of the Writ of Habeas Corpus shall not be suspended,† unless when in Cases of Rebellion or Invasion the public Safety may require it.

Bills of attainder, &c.

No Bill of Attainder or ex post facto Law shall be passed.‡

Taxes, how apportioned.

No Capitation, or other direct Tax, shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No export duty.

No Tax or Duty shall be laid on Articles exported from any State.

No commercial preferences

No Preference shall be given by any Regulation of Commerce or Revenue to the ports of one State over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No money drawn from treasury unless appropriated by law.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No title of nobility.

Officers not to receive presents.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

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* Charter of the U. S. Bank constitutional. 4 Conn., 317, 326, *note*; 333, *note*.

† Its suspension does not affect the duty to *issue* the writ and to require a return showing the authority for the imprisonment. 4 Wall., 4

‡ Bills of attainder defined. 4 Wall., 333. *Ex post facto* law defined. 6 Cranch, 87

States prohibited from the exercise of certain powers.

SECTION 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; [§] make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts,[‖] or grant any Title of Nobility.

No State shall, without the consent of the Congress, lay any Imposts or Duties on Imports[*] or Exports, except what may be absolutely necessary for executing its inspection Laws; and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonage, keep Troops or Ships of War in time of peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of Delay.

ARTICLE II.

President and Vice President; their term of office.

SECTION 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shalll appoint, in such Manner as the Leg-

[§] Applies only to circulating currency, in which the State is the immediate promisor. 4 Pet., 447; 11 Pet., 316; 13 How., 16.

[‖] This protects charters of private corporations. 4 Wheat., 518; 7 Conn., 48. 18 Conn., 64. But not tenure of office of State officers. 10 How., 402, nor other grants of a political character for public purposes 10 How. 535.

[*] This does not include imports from another State. 8 Wall., 123.

Electors of President and Vice President: number, and how appointed.

islature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[*Here followed provisions as to the mode of casting the electoral votes, which are superseded by the Twelfth Amendment. See page* 23].

Electors to vote on the same day.

The Congress may determine the time of choosing the Electors, and the Day on which they shall give their Votes; which day shall be the same throughout the United States.

Qualifications of the President.

No Person, except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

On whom his duties devolve in case of his removal, death or inability.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President; and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

President's compensation.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

His oath.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmaiion:—"I do solemnly swear [or affirm] that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect, and defend the Constitution of the United States."

President to be commander in Chief.

He may require opinion of Cabinet officers

SECTION 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices; and he shall have

Pardoning power.

Power to grant Reprieves and Pardons* for Offenses against the United States, except in Cases of Impeachment.

Treaty making power.

Nomination of certain offices.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

When President may fill vacancies.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Messages to Congress.

May convene and in some cases adjourn Congress.

Shall receive Ambassadors,

SECTION 3. He shall from time to time give to the Cogress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United Ststes.

Forfeiture of offices for crimes.

SECTION 4. The President, Vice President, and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III.

Judicial power, where vested.

Tenure of office.

Compensation.

SECTION 1. The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.† The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

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*Includes power to commute sentences. 18 How., 315.

†Acts of Congress giving State courts jurisdiction. unconstitutional. 1 Wheat. 330.

Extent of judicial power.

See amendment XI.

SECTION 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;*—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States; between Citizens of the same State claiming Lands under Grants of different States, and between a State or the Citizens thereof, and foreign States, Citizens or Subjects.

Original jurisdiction of Supreme Court.

Appellate.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Trial by jury of criminal prosecutions.

Place of trial.

The trial of all Crimes, except in Cases of Impeachment, shall be by Jury, and such Trial shall be held in the State where said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Treason defined.

Proof.

SECTION 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

Its punishment.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.‡

ARTICLE IV.

Each State to give credit to the records of every other.

SECTION 1. Full Faith and Credit shall be Given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may

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*Includes all navigable waters, whether fresh or salt. 12 How., 443. State courts cannot proceed *in rem* against maritime property. 4 Wall., 431. But States can create certain liens on vessels which Admiralty Courts might enforce. 1 Black, 530; 7 Wall., 644; 11 Wall., 185.

‡United States may confiscate traitor's property in civil war. 11 Wall., 268.

by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Privileges of citizens of each State.

SECTION 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.‖

Fugitives from justice to be delivered up.

A Person charged in any State with Treason, Felony or other Crime, who shall flee from Justice, and be found in another State shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

Persons held to service, having escaped to be delivered up.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour; but shall be delivered up on claim of the Party to whom such Service or Labour may be due.

Admission of new States.

SECTION 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress.

Power of Congress over territory and other property of the United States.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other property belonging to the United States; † and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Republican form of government guaranteed. Each State to be protected.

SECTION 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them agains Invasion; and on application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE. V.

Constitution, how amended.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided, that no Amendment which may be made prior to the Year one thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent shall be deprived of its equal Suffrage in the Senate.

‖ Includes only privileges generally attached to citizenship. 18 How., 593; 8 Wall., 180; 12 Wall, 430.

† This relates only to the property belonging to the United States at the time of the adoption of the Constitution. 19 How., 393.

Limitation of amendments.

ARTICLE VI.

Confirmation of old obligations of the United States.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against he United States under this Constitution, as under the Confederation.

Supremacy of Constitution treaties, and laws of the United States.

This Constiution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United, shall be the supreme law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding.

Oath to support Constitution, by Whom taken.

No religious test.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE VII.

What ratification sufficient to establish this constitution.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the same.

Done in Convention, by the Unanimous Consent of the States present the Seventeenth day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth. IN WITNESS whereof We have hereunto subscribed our Names.

Go: WASHINGTON, Presd't and Dep'ty from Va.

NEW HAMPSHIRE.

John Langdon, Nicholas Gilman.

MASSACHUSETTS.

Nathaniel Gorham, Rufus King.

CONNECTICUT.

Wm. Saml. Johnson, Roger Sherman.

NEW YORK.

Alexander Hamilton.

NEW JERSEY.

Wil. Livingston, David Brearley,
Wm. Patterson, Jona. Dayton.

PENNSYLVANIA.

B. Franklin, Thomas Mifflin,
Robt. Morris, Geo. Clymer,
Thomas Fitzsimons, Jared Ingersoll,
James Wilson, Gouv. Morris.

DELAWARE.

Geo. Read, Richard Bassett,
John Dickenson, Gunning Bedford, Jr.
Jaco. Broom.

MARYLAND.

James McHenry, Danl. Carroll.
Dan of St. Thomas, Jenifer.

VIRGINIA.

John Blair, James Madison, Jr.

NORTH CAROLINA.

Wm. Blount, Hu. Williamson,
Richd. Dobbs, Spaight.

SOUTH CAROLINA.

J. Rutledge, Charles Pinckney.
Chas. Coteswortн Pinckney, Pierce Butler.

GEORGIA.

William Few, **Abr. Baldwin.**

Attest: WILLIAM JACKSON, *Secretary.**

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*By July, 1788, it had been ratified by nine of the States, and the Congress of the Confederation provided for the organization of the new government, which went into operation on the first Wednesday of March [March 4th], 1789.

The orthography and punctuation, both of the original Constitution, and of the several Amendments, have been followed exactly, in printing this work, by the aid of copies furnished for the purpose by the Secretary of State of the United States.

ARTICLES,

IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA,

Proposed by Congress, and ratified by the Legislatures of the several States' pursuant to the Fifth Article of the original Constitution.

ARTICLE I.

Proposed September twenty-fifth, 1789. Ratification consummated December fifteenth 1791.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Religious establishment prohibited. Freedom of speech and of the press, and right of petition,

ARTICLE 11.

Proposed September twenty-fifth 1789. Ratification consummated December fifteenth, 1791.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Right to keep and bear arms.

ARTICLE III.

Proposed September twenty-fifth, 1789. Ratification consummated December fifteenth, 1791.

No soldier shall in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Quartering soldiers in private houses.

ARTICLE IV.

Proposed September twenty-fifth, 1789. Ratification consummated December fifteenth, 1791.

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or

Right of search and seizure regulated.

affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

Proposed September twenty-fifth, 1789. Ratification consummated December fifteenth, 1791.

Criminal prosecutions, trials and punishments.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury,† except in cases arising in the land or naval forces, or in the Militia, when in actual service, in time of War or public danger; nor shall any person be subject, for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any Criminal Case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Taking private property for public use.

ARTICLE VI.

Proposed September twenty-fifth, 1789. Ratification consummated December fifteenth, 1791.

Further provisions respecting criminal prosecutions.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor; and to have the Assistance of Counsel for his defence.

ARTICLE VII.

Right of trialby jury.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Proposed September twenty-fifth, 1789. Ratification consummated December fifteenth, 1791.

Excessive bail or punishments.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

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†See 4 Wall., 120. 9 Wall., 274.

ARTICLE IX.

Proposed September twenty-fifth, 1789. Ratification consummated December fifteenth, 1791.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Rights retained by the people.

ARTICLE X.

Proposed September twenty-fifth, 1789. Ratification consummated December fifteenth, 1791.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Powers not delegated to the United States.

ARTICLE XI.

Proposed March four, 1794. Ratification consummated January eight, 1798.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Suits against a State by an individual.

ARTICLE XII.

Proposed December twelfth, 1803. Ratification consummated September twenty fifth, 1804.

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the president, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then

Manner of choosing President and Vice-President.

from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice-President of the United States.

ARTICLE XIII.

Proposed February first, 1865. Ratification consummated December eighteenth, 1865.

Slavery abolished.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

Proposed June sixteenth, 1866. Ratification consummated July twenty-eighth 1868.

Citizenship defined.

Privileges of citizens.

SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Apportionment of Representatives in Congress.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Persons who have broken an official oath of allegiance, by aiding in rebellion, disqualified to hold office.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Public debt obligatory.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Claims for losses by emancipation of slaves.

SECTION 5. That Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE. XV.

Proposed February twenty-seventh, 1869. Ratification consummated March thirtieth, 1870.

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

ACTS OF CONGRESS.

An Act

TO REVISE AND CONSOLIDATE THE STATUTES OF THE UNITED STATES, IN FORCE ON THE FIRST DAY OF DECEMBER, ANNO DOMINI, ONE THOUSAND EIGHT HUNDRED AND SEVENTY-THREE. * * * * *

TITLE XXIII.

The Territories.

CHAPTER ONE.

Provisions Common to all the Territories.

SECTION 1839. Right of Indians in person and property not impaired by this Title, &c., Boundaries &c.
1840. Authority to regulate Indians.
1841. Executive powers.
1842. Veto power.
1843. Secretary.
1844. Secretary's duties.
1845. Salaries of Governors and Secretaries.
1846. Legislative power.
1847. Census and Elections.
1848. Time and place of holding Elections,
1849. Apportionment.
1850. Laws to be submitted to Congress.
1851. Extent of Legislative powers.
1952. Limit of time of sessions.
1853. Compensation of members.
1854. Members of Legislature prohibited from holding certain offices
1855. Prohibition of extra compensation to certain officers.
1856. Election of Justices of the Peace and Militia officers.
1857. Other officers.
1858. Vacancies, how filled.
1859. Qualifications of voting and holding office at first election.
1860. At future elections.
1861. Subordinate officers of Legislature.
1862. Delegate to Congress.
1863. Time, places, and manner of electing Delegate.
1864. Supreme Courts of Territories.
1865. Judicial Districts and Courts.

1866. Jurisdiction of Courts.
1867. Jurisdiction of Justices of the Peace.
1868. Chancery and Common Law Jurisdiction.
1869. Appellate Jurisdiction of Supreme Court.
1870. Clerk of Supreme Court.
1871. Clerk of District Court.
1872. Register in Chancery, residence and office.
1873. Judicial District, how defined.
1874. Judges of Supreme Court to hear certain causes.
1875. District Attorneys.
1876. Marshals.
1877. Appointment of Governor, &c.
1878. Oath of office; how qualified.
1879. Salaries of Justices.
1880. Salary of Attorney.
1881. Salary of Marshal.
1882. When salaries to be paid.
1883. Fees of Clerks, &c.
1884. Salary not to be paid when officer is absent.
1885. Seat of government in a new Territory.
1886. Accounts of the Territories; no payment unless approved by Congress.
1887. Limitation on expenses of printing.
1888. Limitation on expenses of Legislature.
1889. Legislatures not to grant special charters.
1890. Limitation on rights of religious corporations to hold real estate.
1891. Constitution and laws of United States made applicable to all the Territories.
1892. Penitentiaries.
1893. Rules for their government.
1894. Payment of Marshal, &c., and of expenses of subsistence, &c., of offenders.
1895. Imprisonment in penitentiaries.

Rights of Indians in person and property not impaired by this title &c. boundaries &c.

SEC. 1839. Nothing in this Title shall be construed to impair the rights of person or property pertaining to the Indians in any Territory, so long as such rights remain unextinguished by treaty between the United States and such Indians, or to include any Territory which, by treaty with any Indian tribe, is not, without the consent of such tribe, embraced within the territorial limits, or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of any Territory now, or hereafter organized, until such tribe signifies its assent to the President to be embraced within a particular Territory.

Authority to regulate Indians.

SEC. 1840. Nor shall anything in this Title be construed to affect the authority of the United States to make any regulation respecting the Indians of any Territory, their lands, property, or rights, by treaty, law or otherwise, in the same manner as might be made if no temporary government existed, or is hereafter established, in any such Territory.

Executive power.

SEC. 1841. The executive power of each Territory shall be vested in a Governor, who shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the President. He shall reside in the Territory for which he is appointed, and shall be Commander-in-Chief of the Militia thereof. He may grant pardons and reprieves, and remit fines and forfeitures, for offenses against the laws of the Territory for which he is appointed, and respites for offenses against the laws of the United States, till the decision of the President can be made known thereon. He shall commission all officers who are appointed under the laws of such Territory, and shall take care that the laws thereof be faithfully executed.

Veto power.

SEC. 1842. Every bill which has passed the Legislative Assembly of any Territory shall before it becomes a law, be presented to the Governor. If he approve, he shall sign it, but if not, he shall return it, with his objections, to that House in which it originated, and that House shall enter the objections at large on its Journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House agree to pass the bill, it shall be sent; together with the objections, to the other House, by which it shall likewise be reconsidered; and, if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the manner of the persons voting for or against the bill shall be entered on the Journal of such House. If any bill is not returned by the Governor within three days, Sundays excluded, except in Washington and Wyoming, where the term is five days, Sundays excluded, after it has been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislative Assembly, by adjournment *sine die*, prevent its return, in which case it shall not be a law.

Secretary.

SEC. 1843. There shall be appointed a Secretary for each Territory, who shall reside within the Territory for which he is appointed, and shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the President. In case of the death, removal, resignation or absence of the Governor from the Territory, the Secretary shall execute all the powers and perform all the duties of Governor, during such vacancy, or absence, or until another Governor is appointed and qualified.

Secretaries duties.

SEC. 1844. The Secretary shall record and preserve all the laws and proceedings of the Legislative Assembly, and all the acts and proceedings of the Governor in the executive department; he shall transmit one copy of the Laws and Journals of the Legislative Assembly, within thirty days after the end of each session thereof, to the President, and two copies of the laws, within like time, to the President of the Senate, and to the Speaker of the House of Representatives, for the use of Congress. He shall transmit one copy of the executive proceedings and official correspondence semi-annually, on the first day of January and July in each year, to the President. He shall prepare the acts passed by the Legislative Assembly for publication, and furnish a copy thereof to the public printer of the Territory, within ten days after the passage of each act.

SEC. 1845. From and after the first day of July, eighteen hundred and seventy-three, the annual salaries of the Governors of the several Territories shall be three thousand five hundred dollars, and the salaries of the Secretaries shall be two thousand five hundred dollars each.

SEC. 1846. The Legislative power in each Territory shall be vested in the Governor and a Legislative Assembly. The Legislative Assembly shall consist of a Council and House of Representatives. The members of both branches of the Legislative Assembly shall have the qualifications of voters as herein prescribed. They shall be chosen for the term of two years, and the sessions of the respective Legislative Assemblies shall be biennial. Each Legislative Assembly shall fix by law the day of the commencement of its regular sessions. The members of the Council and of the House of Representatives shall reside in the district or county for which they are respectively elected.

Census and election.

SEC. 1847. Previous to the first election for members of the Legislative Assembly of a Territory in which Congress may hereafter provide a temporary government, the Governor shall cause a census of the inhabitants and qualified voters of the several counties and districts of the Territory to be taken by such persons and in such mode as he may designate and appoint, and the persons so appointed shall receive a reasonable compensation for their services. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who superintended such election and the returns thereof, as the Governor may direct; and he shall, at the same time, declare the number of members of the Council and the House of Representatives to which each of the counties or districts is entitled under the act providing such temporary government for the particular Territory. The persons having the highest number of legal votes in each of the districts for members of the Council, shall be declared by the Governor, to be duly elected to the Council; and the persons having the highest number of legal votes for the House of Representatives, shall be declared by the Governor, to be duly elected members of that House; but in case two or more persons voted for, have an equal number of votes, and in case a vacancy otherwise occurs in either branch of the Legislative Assembly, the Governor shall order a new election; and the persons thus elected to the Legislative Assembly, shall meet at such place and on such day as the Governor appoints.

Time and place of holding elections.

SEC. 1848. After such first election, however, the time, place, and manner of holding elections by the people in any newly created Territory, as well as, of holding all such elections in Territories now organized, shall be prescribed by the laws of each Territory.

Appointments.

SEC. 1849. The apportionment of representation, which the Governor is authorized to make by Section eighteen hundred and forty-seven, in the case of a Territory hereafter erected by Congress, shall be as nearly equal as practicable among the several districts and counties, for such first election of the Council and House of Representatives, giving to each section of the Territory representation in the ratio of its population, except Indians not taxed; and thereafter in such new Territory, as well as in all Territories now organized, the Legislative Assemblies, respectively, may re-adjust and apportion the representation to the two Houses thereof, among the several counties and districts, in such manner, from time to time, as they deem just and proper; but the number of either House, as authorized by law shall not be increased.

Laws to be submitted to Congress.

SEC. 1850. All Laws passed by the Legislative Assembly and Governor of any Territory, except in the Territories of Colorado, Dakota, Idaho, Montana, and Wyoming, shall be submitted to Congress, and if disapproved, shall be null and of no effect.

Extent of Legislative power.

SEC. 1851. The Legislative power of every Territory shall extend to all rightful subjects of Legislation, not inconsistent with the Constitution and laws of the United States. But no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents, be taxed higher than the lands or other property of residents.

Limit of time of session.

SEC. 1852. The sessions of the Legislative Assemblies of the several Territories of the United States, shall be limited to forty days duration.

Compensation of Members.

SEC. 1853. The members of each branch of the several Territorial Legislatures shall receive a compensation of six dollars per day during the sessions herein provided for, and they shall receive such mileage as now provided by law: *Provided*, That the President of the Council and the Speaker of the House of Representatives shall each receive a compensation of ten dollars per day.

Members of Legislatures prohibited from holding certain offices.

SEC. 1854. No member of the Legislative Assembly of any Territory now organized shall hold or be appointed to any office which has been created or the salary or emoluments of which have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first Legislative Assembly in any Territory hereafter organized; and no person holding a commission or appointment under the United States, except Postmasters, shall be a member of the Legislative Assembly, or shall hold any office under the Government of any Territory. The exception of the Postmaster shall not apply in the Territory of Washington.

prohibition of extra compensation to certain officers

SEC. 1855. No law of any Territorial Legislature shall be made or enforced, by which the Governor or Secretary of a Territory, or the members or officers of any Territorial Legislature are paid any compensation other than that provided by the laws of the United States.

Election of Justices of the Peace and Militia officers.

SEC. 1856. Justices of the peace and all general officers of the Militia, in the several Territories, shall be elected by the people, in such manner as the respective Legislatures may provide by law.

Other officers.

SEC. 1857. All township, district, and county officers, except justices of the peace, and general officers of the Militia, shall be appointed or elected in such manner as may be provided by the Governor and Legislative Assembly of each Territory; and all other officers not herein otherwise provided for; the Governor shall nominate, and by, and with the advice and consent of the Legislative Council of each Territory, shall appoint; but in the first instance, where a new Territory is hereafter created by Congress, the Governor alone, may appoint all the officers referred to in this and the preceding section, and assign them to their respective townships, districts, and counties, and the officers so appointed shall hold their offices until the end of the first session of the Legislative Assembly.

Qualifications of voting and holding offices at first election.

SEC. 1858. In any of the Territories, whenever a vacancy happens from resignation or death, during the recess of the Legislative Council, in any office which, under the Organic Act of any Territory, is to be filled by appointment of the Governor, by and with the advice and consent of the Council, the Governor shall fill such vacancy by granting a commission, which shall expire at the end of the next session of the Legislative Council.

SEC. 1859. Every male citizen above the age of twenty one, including persons who have legally declared their intention to become citizens in any Territory hereafter organized, and who are actual residents of such Territory at the time of the organization thereof, shall be entitled to vote at the first election in such Territory, and to hold any office therein; subject, nevertheless, to the limitations specified in the next section.

At future elections.

SEC. 1860. At all subsequent elections, however, in any Territory hereafter organized by Congress, as well as at all elections in Territories already organized the qualifications of voters, and of holding office, shall be such as may be prescribed by the Legislative Assembly of each Territory; subject, nevertheless, to the following restrictions on the power of the Legislative Assembly, namely:

First:—The right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of twenty-one years, and by those above that age, who have declared on oath, before a competent court of record, their intention to become such, and have taken an oath to support the Constitution and Government of the United States.

Second:—There shall be no denial of the elective franchise or of holding office, to a citizen, on account of race, color, or previous condition of servitude.

Third. No officer, soldier, seaman, mariner, or other person in the army or navy, or attached to troops in the service of the United States, shall be allowed to vote in any Territory, by reason of being on service therein, unless such territory is, and has been for the period of six months, his permanent domicile.

Fourth. No person belonging to the army or navy, shall be elected to or hold any civil office or appointment in any Territory.

Subordinate officers of Legislature.

SEC. 1861. The subordinate officers of each branch of every Legislative Assembly shall consist of one Chief Clerk who shall receive a compensation of eight dollars per day, and of one Assistant Clerk, one Enrolling Clerk, one Engrossing Clerk, one Sergeant-at-Arms, one Doorkeeper, one Messenger, and one Watchman, who shall receive a compensation of five dollars per day during the sessions, and no charge for a greater number of officers and attendants, or any larger per diem, shall be allowed or paid by the United States to any Territory.

Delegate to Congress.

SEC. 1862. Every Territory shall have the right to send a Delegate to the House of Representatives of the United States, to serve during each Congress, who shall be elected by the voters in the Territory qualified to elect members of the Legislative Assembly thereof. The person having the greatest number of votes shall be declared by the Governor duly elected, and a certificate shall be given accordingly. Every such Delegate shall have a seat in the House of Representatives, with the right of debating, but not of voting.

SEC. 1863. The first election of a Delegate in any Territory for which a temporary government is hereafter provided by Congress, shall be held at the time and places, and in the manner the Governor of such Territory may direct, after, at least sixty days notice, to be given by proclamation; but at all subsequent elections therein, as well as at all elections for a Delegate in organized Territories, such time, places, and manner of holding the election shall be prescribed by the law of each Territory.

Supreme Court of Territories.

SEC. 1864. The Supreme Court of every Territory shall consist of a Chief Justice and two Associate Justices, any two of whom shall constitute a quorum, and they shall hold their offices for four years, and until their successors are appointed and qualified. They shall hold a term annually at the seat of Government of the Territory for which they are respectively appointed.

Judicial districts and courts.

SEC. 1865. Every Territory shall be divided into three Judicial Districts; and a District Court shall be held in each district of the Territory by one of the Justices of the Supreme Court, at such time and place as may be prescribed by law; and each Judge, after assignment, shall reside in the district to which he is assigned.

Jurisdiction of courts.

SEC. 1866. The jurisdiction, both appellate and original, of the courts provided for in section 1907 and 1908, shall be limited by law.

Jurisdiction of justices of the peace.

SEC. 1867. No justices of the peace in any Territory shall have jurisdiction of any case in which the title to land or the boundary thereof, in anywise comes in question.

Chancery and common law jurisdiction.

SEC. 1868. The Supreme Court and the District Courts, respectively, of every Territory, shall possess chancery as well as common law jurisdiction.

Appellate jurisdiction of Supreme Court.

SEC. 1869. Writs of error, bills of exception, and appeals shall be allowed in all cases, from the final decisions of the District Courts to the Supreme Court, of all the Territories, respectively, under such regulation as may be prescribed by law, but in no case, removed to the Supreme Court, shall trial by jury be allowed in that court.

Clerk of Supreme Court.

SEC. 1870. The Supreme Court of each Territory shall appoint its own clerk, who shall hold his office at the pleasure of the court for which he is appointed.

Clerk of District Court.

SEC. 1871. Each Judge of the Supreme Court of the respective Territories shall designate and appoint one person as clerk of the district over which he presides, where one is not already appointed, and shall designate and retain but one such clerk, where more than one is already appointed, and only such district clerk shall be entitled to a compensation from the United States.

Register in chancery; residence in office.

SEC. 1872. Every district clerk shall be also the register in chancery, and shall reside and keep his office at the place where the court is held.

Judicial districts how defined.

SEC. 1873. Temporarily, and until otherwise provided by law, the Governor of every Territory which may be hereafter established, shall define, by proclamation, the judicial districts of such Territory, and assign the Judges appointed for such Territory, to the several districts as well as fix the times and places for holding courts, in the respective counties or subdivisions of each judicial district.

Judges of Supreme Court to hear certain causes.

SEC. 1874. The Judges of the Supreme court of each Territory, are authorized to hold court within their respective districts, in the counties wherein, by the laws of the Territory, courts have been or may be established for the purpose of hearing and determining all matters and causes, except those in which the United States is a party; but the expense of holding such courts shall be paid by the Territory, or by the counties in which the courts are held, and the United States shall in no case be chargeable therewith.

District Attorneys.

SEC. 1875. There shall be appointed in each Territory a person learned in the law, to act as Attorney for the United States. He shall continue in office for four years, and until his successor is appointed and qualified, unless sooner removed by the President.

Marshals.

SEC. 1876. There shall be appointed a Marshal for each Territory. He shall execute all process issuing from the Territorial courts, when exercising their jurisdiction as circuit and district courts of the United States. He shall have the power and perform the duties, and be subject to the regulations and penalties, imposed by law, on the marshals for the several judicial districts of the United States. He shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the President.

Appointments of Governor.

SEC. 1877. The Governor, Secretary, Chief Justice, and Associate Justices, Attorney and Marshal of every Territory shall be nominated, and by, and with, the advice and consent of the Senate, appointed by the President.

Oath of office; how qualified.

SEC. 1878. The Governor and Secretary for each Territory, shall, before they act as such, respectively, take an oath before the district judge, or some justice of the peace in the limits of the Territory for which they are appointed, duly authorized to administer oaths by the laws in force therein, or before the Chief Justice or some Associate Justice of the Supreme Court of the United States, to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices; and such oaths shall be certified by the person before whom the same are taken; and such certificates shall be received and recorded by the Secretary, among the executive proceedings, and the Chief Justice and the Associate Justices, and all other civil officers appointed for any Territory, before they act as such, shall take a like oath before the Governor or Secretary, or some Judge or justice of the peace of the Territory, who may be duly commissioned and qualified, and such oath shall be certified and transmitted by the person taking the same to the Secretary, to be by him recorded as above directed; but after the first qualification of the officers herein specified in the case of a new Territory, as well as in all organized Territories, the like oath shall be taken, certified, and recorded in such manner and form as may be prescribed by the law of each Territory.

Salaries of Justices.

SEC. 1879. The annual salary of the Chief Justice and Associate Justices of all the Territories now organized, shall be three thousand dollars each.

Salary of Attorney.

SEC. 1880. The salary of the Attorney of the United States for each Territory, shall be at the rate of two hundred and fifty dollars annually.

Salary of Marshal.

SEC. 1881. The salary of the Marshal of the United States for each Territory, shall be at the rate of two hundred dollars a year.

SEC. 1882. The salaries provided for in this Title, to be paid to the Governor, Secretary, Chief

Justices and Associate Justices, District Attorney and Marshal of the several Territories, shall be paid quarter-yearly at the Treasury of the United States.

Fees of Clerks.

SEC. 1883. The fees and costs to be allowed to the United States Attorneys and Marshals, to the Clerks of the Supreme and District Courts, and to jurors, witnesses, commissioners and printers, in the Territories of the United States, shall be the same for similar services by such persons as prescribed in chapter sixteen; Title, "The Judiciary," and no other compensation shall be taxed or allowed.

Salary not to be paid when officer is absent.

SEC. 1884. When any officer of a Territory is absent therefrom, and from the duties of his office, no salary shall be paid him during the year in which such absence occurs, unless good cause therefor be shown to the President, who shall officially certify his opinion of such cause to the proper accounting officer of the Treasury, to be filed in his office.

Seat of government in a new Territory.

SEC. 1885. The Legislative Assembly of every Territory hereafter organized, shall hold its first session at such time and place in the Territory, as the governor thereof shall appoint and direct, and at the first session of the Legislative Assembly, or as soon thereafter as it may be deemed expedient, the Governor and Legislative Assembly shall proceed to locate and establish the seat of government for the Territory at such place as they may think proper; but such place shall thereafter be subject to be changed by the Governor and Legislative Assembly.

Accounts of the Territories, no payment unless approved by Congress.

SEC. 1886. All accounts for disbursements in the Territories of the United States, of money appropriated by Congress for the support of government therein, shall be settled and adjusted at the Treasury Department; and no act, resolution, or order of the Legislature of any Territory, directing the expenditure of the sum, shall be deemed a sufficient authority for such disbursement, but sufficient vouchers and proof for the same shall be required by the accounting officers of the Treasury. No payment shall be made or allowed, unless the Secretary of the Treasury has estimated therefor and the object been approved by Congress. No session of the Legislature of a Territory shall be held until the appropriation for its expenses has been made.

Limitation on expense of printing.

SEC. 1887. Hereafter no expense for printing exceeding four thousand dollars, including printing laws, journals, bills and necessary printing of the same nature, shall be incurred for any session of the Legislature of any of the Territories.

Limitation on expenses of Legislatures.

SEC. 1888. No Legislative Assembly of a Territory shall, in any instance or under any pretext, exceed the amount appropriated by Congress for its annual expenses.

Legislatures not to grant special charters.

SEC. 1889. The Legislative Assemblies of the several Territories shall not grant private charters or special privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate for mining, manufacturing, and other industrial pursuits, or the construction or operation of rail roads, wagon roads, irrigating ditches, and the colonization and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any benevolent, charitable or scientific association.

Limitation on right of religious corportions to hold real estate.

SEC. 1890. No corporation or association for religious or charitable purposes, shall acquire or hold real estate in any Territory, during the existence of the Territorial government, of a greater value than fifty thousand dollars; and all real estate acquired or held by such corporation or association contrary hereto shall be forfeited and escheat to the United States; but existing vested rights in real estate shall not be impaired by the provisions of this section.

Constitution and laws of the United States made applicable to all the Territories.

SEC. 1891. The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized as elsewhere within the United States.

Penitentiaries.

SEC. 1892. Any penitentiary which has been, or may hereafter be, erected by the United States in any organized Territory shall, when the same is ready for the reception of convicts, be placed under the care and control of the Marshal of the United States for the Territory or District in which such penitentiary is situated; except as otherwise provided in the case of the penitentiaries in Montana, Idaho, Wyoming and Colorado.

Rules for their government.

SEC. 1893. The Attorney-General of the United States shall prescribe all needful rules and regulations for the Government of such penitentiary, and the Marshal having charge thereof shall cause them to be duly and faithfully executed and obeyed, and the reasonable compensation of the Marshal and of his deputies for their services under such regulations shall be fixed by the Attorney-General.

Payment of Marshal &c., and of expenses of subsistence &c., of offenders.

SEC. 1894. The compensation as well as the expense incident to the subsistence and employment of offenders against the laws of the United States, who have been or may hereafter be, sentenced to imprisonment in such penitentiary, shall be chargeable on, and payable out of, the fund for defraying the expenses of suits in which the United States are concerned, and of prosecutions for offenses committed against the United States; but nothing herein shall be construed to increase the maximum compensation now allowed by law to those officers.

Imprisonment in penitentiaries.

SEC. 1895. And person convicted by a court of competent jurisdiction in a Territory, for a violation of the laws thereof, and sentenced to imprisonment, may, at the cost of such Territory, on such terms and conditions as may be prescribed by such rules and regulations be received, subsisted, and employed in such penitentiary during the term of his imprisonment, in the same manner as if he had been convicted of an offense against the laws of the United States.

CHAPTER TWO.

Of Provisions concerning particular Organized Territories.

SECTION 1902. Boundaries of Idaho.
1905. Elections in Washington and Idaho.
1906. The Delegate to Congress must be a citizen of the United States.
1907. The Judicial power, how vested in all the Territories except Arizona.
1909. Writs of error to United States Supreme Court.
1910. Jurisdiction of District Courts.
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1935. Contingent expenses of certain Territories.
1936. Control of penitentiaries in Montana, Idaho, &c., transferred to said Territories.
1937. Expenses of maintenance of prisoners to be paid from judiciary fund.
1940. In Washington, Idaho, and Montana.
1941. No Payment of salaries in certain Territories until officers enter on their duties.
1943. In Idaho and Montana.
1945. In Idaho and Montana.
1946. School lands in certain Territories.
1949. Agencies, &c., continued.
1951. Disbursing officers in Washington, Idaho and Montana, to give security.

Of Idaho.

SEC. 1902. All that part of the Territory of the United States, included within the following limits, to wit: Beginning at a point in the middle channel of the Snake river, where the northern boundary of Oregan intersects the same; then follow down the channel of Snake river to a point opposite the mouth of the Kooskooskia or Clear Water river; thence due North to the forty-ninth parallel of latitude; thence East, along that parallel, to the thirty-ninth degree of longitude West of Washington; thence South along that degree of longitude to the crest of the Bitter Root Mountains; thence Southward along the crest of the Bitter Root Mountains till its intersection with the Rocky Uountains; thence Southward along the crest of the Rocky Mountains to the thirty-fourth degree of longitude West of Washington; thence South along that degree of longitude to the forty-second degree of North latitude; thence West, along that parallel, to the Eastern boundary of the State of Oregon; thence North, along that boundary, to the place of beginning, is created into a temporary government by the name of the Territory of Idaho.

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Elections in Washington and Idaho.

SEC. 1905. The elections in the Territories of Washington and Idaho for Delegates to the House of Representatives, shall be held biennially on the Tuesday next following the first Monday in November; and all elective Territorial, County and Precinct officers shall hereafter be elected at the times herein specified, unless otherwise provided by legislation subsequent hereto, in either of such Territories.

Delegate to Congress.

SEC. 1906. The Delegate to the House of Representatives from each of the Territories of Washington, Idaho and Montana, must be a citizen of the United States.

Judicial power how vested.

SEC. 1907. The judicial power in New Mexico, Utah, Washington, Colorado, Dakota, Idaho, Montana and Wyoming, shall be vested in a Supreme Court, District Courts, Probate Courts, and in Justices of the Peace.

Writs of error to U. S. court.

SEC. 1909. Writs of error and appeals from the final decisions of the Supreme court of either of the Territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana, and Wyoming, shall be allowed to the Supreme Court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amouut in controversy, to be ascertained by the oath of either party, or of other competent witnesses, exceeds one thousand dollars, except that a writ of error or appeal shall be allowed to the Supreme Court of the United States from the decision of the Supreme Courts created by this Title or of any Judge thereof, or of the District Courts created by this Title, or of any Judge thereof, upon Writs of *habeas corpus* involving the question of personal freedom.

Jurisdiction of district courts under Constitution &c

SEC. 1910. Each of the District Courts in the Territories mentioned in the preceeding section shall have and exercise the same jurisdiction, in all cases arising under the Constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and the first six days of every term of the respective district courts, or so much thereof as is necessary, shall be appropriated to the trial of causes arising under such Constitution and laws; but writs of error and appeals in all such cases may be had to the Supreme Court of each Territory, as in other cases.

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Judges of Supreme Court in Idaho and Montana to define Judicial districts, &c.

SEC. 1914. The Judges of the Supreme Courts of the Territories of Idaho and Montana, or a majority of them, shall, when assembled at their respective seats of Government, define the judicial districts of each of such Territories, and assign the Judges who may be appointed for each of such Territories to the several districts; and shall also fix the times and places for holding courts in the several counties or subdivisions in each of such judicial districts, and alter the times and places of holding the courts, as to them may seem proper and convenient; but not less than two terms a year shall be held at each place of holding court in the Territory of Montana.

Number of Councilmen and Representatives in each Territory.

SEC. 1922. The Councils of New Mexico and Utah shall each consist of thirteen members and the House of Representatives of twenty-six members. The Council of Washington Territory shall consist of nine members, and the House of Representatives of eighteen members, which may be increased to thirty. The Councils of Colorado and Dakota, shall each consist of nine members, which may be increased to thirteen, and the House of Representatives of thirteen members, which may be increased to twenty-six. The Council of Arizona shall consist of nine members, and the House of Representatives of eighteen members. The Council of Idaho and Montana shall each consist of seven members, which may be increased to thirteen and the House of Representatives of thirteen members, which may be increased to twenty-six. The Council of Wyoming shall consist of nine members, which may be increased to thirteen, and the House of Representatives of thirteen members, which may be increased to twenty seven.

Extra sessions Legislative Assembly in Washington, Idaho, Montana.

SEC. 1923. In each of the Territories of Washington, Idaho and Montana, the Governor shall have power to call the Legislative Assembly together by proclamation, on an extraordinary occasion, at any time.

> "Act of June 22, 1874, Chapter 388. * * * * * but hereafter no extraordinary session of the Legisture of any Territory, wherever the same is now authorized by law, shall be called until the reasons for the same have been presented to the President of the United States, and his approval thereof has been duly given. * * * * *

SEC. 1926. Justices of the Peace, in the Territories of New Mexico, Utah, Washington, Dakota, Idaho, Montana and Wyoming, shall not have jurisdiction of any matter in controversy where the debt or sum claimed exceeds one hundred dollars.

Contingent expenses of certain Territories.

SEC. 1935. There shall be appropriated, annually, one thousand dollars, to be expended by the respective Governors, to defray the contingent expenses of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana and Wyoming, including the salary of the clerk in the Executive Departments of those Territories.

Control of penitentiaries in Montana, Idaho, &c., transferred to said Territories.

SEC. 1936. The care and custody of the penitentiaries in Montana, Idaho, Wyoming and Colorado, and the personal property thereunto belonging, and the use and occupation thereof, are transferred to such Territories, respectively, until otherwise ordered by the Attorney-General; but the legal title to such penitentiaries and the property shall continue to vest in the United States.

Expenses of maintenance of prisoners to be paid from judiciary fund.

SEC. 1937. The Territories named in the preceeding section shall keep and maintain. in the penitentiaries transferred to their custody and control, all persons convicted in such Territories of violations of the laws of the United States, and sentenced to imprisonment therefor, and all persons held to answer for alleged violations of the laws of the United States in such Territories, at the rate and price, to be paid by the United States, out of the judiciary fund, of one dollar per day for each person so imprisoned.

> Act of June 20, 1874, Sec. 2. That the penitentiaries in the Territories of Montana, Idaho and Wyoming, shall continue under the care and control of the Marshal of the United States for said Territories, under and pursuant to the provisions of the act entitled, "An act in relation to certain Territorial pentiaries," approved January 10, 1871; which said last mentioned act, is hereby revised and re-enacted, so far as the same applies to the Territories of Montana, Idaho and Wyoming, * * * * *

In Washington, Idaho and Montana.

SEC. 1940. There shall be appropriated, respectively for the Territories of Washington, Idaho, and Montana, annually, a sufficient sum to be expended by the Secretary of each Territory herein named upon an estimate to be made by the Secretary of the Treasury, to defray the expenses of the Legislative Assembly and other incidental expenses. The Governor and Secretary of each Territory above specified, shall, in the disbursement of all moneys intrusted to them, be governed solely by the instructions of the Secretary of the Treasury, and shall semi-annually, account to such Secretary, for the manner in which such sums of money have been expended.

No payment of salary in certain Territories until officers enter on their duties.

SEC. 1941. No payment of salary shall be made to the Governor, Secretary, Chief Justice, and Associate Justices of Washington, Idaho and Montana Territories, until such officers have entered upon the duties of their respective appointments. * * *

Idaho and Montana.

SEC. 1943. The members of the Legislative Assembly of Idaho and Montana Territories, shall each receive four dollars for every twenty miles' travel in going to and returning from the sessions of their respective bodies, estimated according the nearest usually traveled route.

* * *

In Idaho and Montana.

SEC. 1945. The Seat of government, when once fixed by the Governor and Legislative Assembly of Idaho and Montana, respectively, shall not be at any time changed, except by an act of such Assembly, for each Territory respectively, duly passed and approved, after due notice, at the first general election thereafter, by a majority of the legal votes cast on that question.

School lands in certain Territories.

SEC. 1946. Sections numbered sixteen and thirty-six, in each township of the Territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana, and Wyoming, shall be reserved for the purpose of being applied to schools in the several Territories herein named, and in the States and Territories hereafter to be erected out of the same. * * * *

Agencies, &c., continued.

SEC. 1949. The existing agencies and superintendencies of the Indians inhabiting the Territories of Idaho and Montana. shall be continued with the same powers and duties now prescribed by law, except that the President may, at his discretion, change the location of the office of such agents or superintendents.

* * * *

Disbursing officers in Washington, Idaho and Montana to give security.

SEC. 1951. All officers to be appointed by the President, by and with the advice and consent of the Senate, for the Territories of Washington, Idaho and Montana, who by virtue of the provisions of any law now existing, or which may be enacted by Congress, are required to give security for moneys that may be entrusted to them for disbursement, shall give such security at such time and in such manner as the Secretary of the Treasury may prescribe.

TITLE XXV.

Citizenship.

SECTION 1992. Who are Citizens.
1993. Citizenship of children of Citizens born abroad.
1994. Citizenship of married women.
1995. Of persons born in Oregon.
1996. Rights as Citizens forfeited for desertion etc.
1997. Certain soldiers and sailors not to incur the forfeitures of the last section.
1998. Avoiding the draft.
1999. Right of expatriation declared.
2000. Protection to naturalized Citizens in foreign states.
2001. Release of Citizens imprisoned by foreign governments demanded.

Who are citizens.

SEC. 1992. All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States.

Citizenship of children of citizens born abroad

SEC. 1993. All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.

Citizenship of married women.

SEC. 1994. Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen.

Of persons born in Oregon.

SEC. 1995. All persons born in the district of country formerly known as the Territory of Oregon, and subject to the jurisdiction of the United States on the 18th of May, 1872, are citizens in the same manner as if born elsewhere in the United States.

Rights as citizens forfeited for desertion, etc.

SEC. 1996. All persons who deserted the military or naval service of the United States, and did not return thereto or report themselves to a provost marshal within sixty days after the issuance of the proclamation by the President, dated the 11th day of March, 1865, are deemed to have voluntarily relinquished and forfeited their rights of citizenship, as well as their right to become citizens; and such deserters shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizens thereof.

Certain soldiers and sailors, not to incur the forfeitures of the last section.

SEC. 1997. No soldier or sailor, however, who faithfully served according to his enlistment until the 19th day of April, 1865, and who without proper authority or leave first obtained, quit his command or refused to serve after that date, shall be held to be a deserter from the Army or Navy; but this section shall be construed solely as a removal of any disability such soldier or sailor may have incurred, under the preceding section, by the loss of citizenship and of the right to hold office, in consequence of his desertion.

Avoiding the draft.

SEC. 1998. Every person who hereafter deserts the military or naval service of the United States, or who, being duly enrolled, departs the jurisdiction of the district in which he is enrolled, or goes beyond the limits of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, shall be liable to all the penalties and forfeitures of section nineteen hundred and ninety-six.

Right of expatriation declared.

SEC. 1999. Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this Government has freely received emigrants from all nations, and invested them with the rights of citizenship; and, whereas, it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and, whereas, it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore, any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is declared inconsistent with the fundamental principles of the Republic.

Protection of naturalized citizens in foreign countries.

SEC. 2000. All naturalized citizens of the United States while in foreign countries, are entitled to and shall receive from this Government the same protection of person and property which is accorded to native born citizens.

Release of citizens imprisoned by foreign governments to be demanded.

SEC. 2001. Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the

President, forthwith, to demand of that government the reasons of such imprisonment; and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress.

TITLE XXX

Naturalization.

SECTION 2165. Aliens, how naturalized.
2166. Aliens honorably discharged from military service.
2167. Minor residents.
2168. Widow and children of declarants.
2169. Aliens of African nativity and descent.
2170. Residence of five years in United States.
2171. Alien enemies not admitted.
2172. Children of persons naturalized under certain laws to be citizens.
2173. Police Court of District of Columbia has no power to naturalize foreigners.
2174. Naturalization of seamen.

Aliens how naturalized.

SEC. 2165. An alien may be admitted to become a citizen of the United States in the following manner, and not otherwise:

Declaration of intention.

First—He shall declare on oath, before a circuit or district court of the United States, or a district or Supreme Court of the Territories, or a court of record of any of the States having common-law jurisdiction, and a seal and clerk, two years, at least, prior to his admission, that it is *bona fide* his intention to become a citizen of the United States, and to renounce forever, all allegiance and fidelity to any foreign Prince, Potentate, or State, or Sovereignty of which the alien may be at the time a citizen or subject.

Oath to support the Constitution of the U. S.

Second—He shall at the time of his application to be admitted, declare, on oath, before some one of the courts above specified, that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to every foreign Prince, Potentate, State or Sovereignty; and, particularly, by name, to the Prince, Potentate, State or Sovereignty of which he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

Residence in United States, or States, and good moral character.

Third—It shall be made to appear to the satisfaction of the court admitting such alien, that he has resided within the United States five years at least, and within the State or Territory where such court is at the time held, one year at least; and that during that time he has behaved as a man of a good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; but the oath of the applicant shall in no case be allowed to prove his residence.

Title of nobility to be renounced.

Fourth—In case the alien applying to be admitted to citizenship has borne any hereditary title, or been of any of the orders of Nobility in the Kingdom or State from which he came, he shall, in addition to the above requisites. make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Persons residing in the United States before 29th, January 1795.

Fifth—Any alien who was residing within the limits and under the jurisdiction of the United States before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen on due proof, made to some one of the courts above specified, that he has resided two years, at least, within the jurisdiction of the United States, and one year at least, immediately preceding his application, within the State or Territory where such court is at the time held; and on his declaring on oath that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign Prince, Potentate, State, or Sovereignty, and particularly by name, to the Prince, Potentate, State or Sovereignty whereof he was before a citizen or subject; and, also on its appearing to the satisfaction of the court, that during such term of two years he has behaved as a man of good moral character, attached to the Constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien, applying for admission to citizenship, has borne any hereditary title, or been of any of the orders of nobility in the Kingdom or State from which he came, on his, moreover, making in the court an express renunciation of his title or order of nobility. All of the proceedings, required in this condition to be performed in the court, shall be recorded by the clerk thereof.

Persons residing between 18th, June 1798, and 18th, June 1812.

Sixth—Any alien who was residing within the limits and under the jurisdiction of the United States, between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the eighteenth day of June one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States without having made any previous declaration of his intention to become such; but whenever any person, without a certificate of such declaration of intention, makes application to be admitted a citizen, it must be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States, before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same; and the residence of the applicant within the limits and under the jurisdiction of the United States for at least five years immediately preceding the time of such application, must be proved by the oath of citizens of the United States, which citizens shall be named in the record as witnesses; and such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place where the applicant has resided for at least five years, shall be stated and set forth, together with the names of such citizens in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

Aliens honorably discharged from military service.

SEC. 2166. Any alien of the age of twenty-one years and upward, who has enlisted or may enlist, in the armies of the United States, either the regular or the volunteer forces, and has been, or may be hereafter honorably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such persons having been honorably discharged from the service of the United States.

Minor residents.

SEC. 2167. Any alien being under the age of twenty-one years, who has resided in the United States three years next preceding his arriving at that age, and who has continued to reside therein to the time he may make application to be admitted a citizen thereof, may after he arrives at the age of twenty-one years, and after he has resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of section twenty-one hundred and sixty five, but such alien shall make the declaration required therein, at the time of his admission; and shall further declare, on oath, and prove to the satisfaction of the court, that, for two years next preceding, it has been his *bona fide* intention to become a citizen of the United States; and he shall in all other respects comply with the laws in regard to naturalization.

Widow and children of declarants.

SEC. 2168. When any alien who has complied with the first condition specified in section twenty-one hundred and sixty-five, dies before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law.

Aliens of African descent and nativity.

SEC. 2169. The provisions of this Title shall apply to aliens being free white persons, and to aliens of African nativity and to persons of African descent.

Residence five years in U. S.

SEC. 2170. No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided within the United States.

Alien enemies not admitted.

SEC. 2171. No alien who is a native citizen or subject, or a denizen of any Country, State, or Sovereignty with which the United States are at war, at the time of his application, shall be then admitted to become a citizen of the United States, but persons resident within the United States, or the Territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had before that day made a declaration, according to law, of their intention to become citizens of the United States, or who were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they were alien enemies at the time and in the manner prescribed by the laws heretofore passed on that subject; nor shall anything herein contained be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

Children of persons naturalized under certain laws to

SEC. 2172. The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject, be citizens. by the Government of the United States, may have become citizens of any one of the States, under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof, but no person heretofore proscribed by any State, or who has been legally convicted of having joined the army of Great Brittain during the Revolutionary War, shall be admitted to become a citizen without the consent of the Legislature of the State in which such person was proscribed.

Police court of D. C.

SEC. 2173. The Police Court of the District of Columbia shall have no power to naturalize foreigners.

Naturalization of seaman.

SEC. 2174. Every seaman being a foreigner, who declares his intention of becoming a citizen of the United States, in any competent court, and shall have served three years on board of a merchant-vessel of the United States, subsequent to the date of such declaration, may on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant-vessel of the United States, anything to the contrary in any act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen.

TITLE XXXII

CHAPTER FOUR.

Pre-Emptions.

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2288. Right of transfer of settlers under homestead or pre-emption laws for certain public purposes.

Lands subject to pre-emption.

SEC. 2257. All lands belonging to the United States, to which the Indian title has been or may hereafter be extinguished, shall be subject to the right of pre-emption under the conditions, restrictions, and stipulations provided by law.

Lands not subject to pre-emption.

SEC. 2258. The following classes of lands, unless otherwise specially provided for by law, shall not be subject to the rights of pre-emption, to-wit:

First—Lands included in any reservation by any treaty, law, or proclamation of the president, for any purpose.

Second—Lands included within the limits of any incorporated town, or selected as the site of city or town.

Third—Lands actually settled and occupied for purposes of trade and business, and not for agriculture.

Fourth—Lands on which are situated any known salines or mines.

Persons entitled to pre-emption.

SEC. 2259. Every person, being the head of a family, or widow, or single person, over the age of twenty-one years, and a citizen of the United States, or having filed a declaration of intention to become such, as required by the naturalization laws, who has made, or hereafter makes, a settlement in person on the public lands subject to pre-emption, and who inhabits and improves the same, and who has erected or shall erect a dwelling thereon, is authorized to enter with the register of the land-office for the district in which such land lies, by legal sub-divisions, any number of acres not exceeding one hundred and sixty, or a quarter-section of land, to include the residence of such claimant, upon paying to the United States the minimum price of such land.

Persons not entitled to pre-emption.

SEC. 2260. The following classes of persons, unless otherwise specially provided for by law, shall not acquire any right of pre-emption under the provisions of the preceding section, to-wit:

First—No person who is the proprietor of three hundred and twenty acres of land in any State or Territory.

Second—No person who quits or abandons his residence on his own land to reside on the public lands in the same State or Territory.

Limitation of pre-emption right.

SEC. 2261. No person shall be entitled to more than one pre-emptive right by virtue of the provisions of section twenty-two hundred and fifty-nine; nor where a party has filed his declaration of intention to claim the benefits of such provisions, for one tract of land, shall he file, at any future time, a second declaration for another tract.

Oath of pre-emptionist, where filed, penalty.

SEC. 2262. Before any person claiming the benefit of this chapter is allowed to enter lands, he shall make oath before the receiver or register of the land-district in which the land is situated that he has never had the benefit of any right of pre-emption under section twenty-two hundred and fifty-nine; that he is not the owner of three hundred and twenty acres of land in any State or Territory; that he has not settled upon and improved such land to sell the same on speculation, but in good faith to appropriate it to his own exclusive use; and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person whatsoever, by which the title which he might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself; and if any person taking such oath swears falsely in the premises, he shall forfeit the money which he may have paid for such land, and all right and title to the same; and any grant or conveyance which he may have made, except in the hands of *bona fide* purchasers, for a valuable consideration, shall be null and void, except as provided in section twenty-two hundred and eighty-eight. And it shall be the duty of the officer administering such oath to file a certificate thereof in the public land-office of such district, and to transmit a duplicate copy to the General Land-Office, either of which shall be good and sufficient evidence that such oath was administered according to law.

Proof of settlement, assignment of pre-emption rights.

SEC. 2263. Prior to any entries being made under and by virtue of the provisions of section twenty-two hundred and fifty-nine, proof of the settlement and improvement thereby required shall be made to the satisfaction of the register and receiver of the land-district in which such lands lie, agreeably to such rules as may be prescribed by the Secretary of the Interior; and all assignments and transfers of the right hereby secured, prior to the issuing of the patent, shall be null and void.

Statement to be filed by settler with intent to purchase, on lands subject to private entry.

SEC. 2264. When any person settles or improves a tract of land subject at the time of settlement to private entry, and intends to purchase the same under the preceding provisions of this chapter, he shall, within thirty days after the date of such settlement, file with the register of the proper district a written statement, describing the land settled upon and declaring his intention to claim the same under the pre-emption laws; and he shall, moreover, within twelve months after the date of such settlement, make the proof, affidavit, and payment hereinbefore required. If he fails to file such written statement, or to make such affidavit, proof, and payment within the several periods named above the tract of land so settled and improved shall be subject to the entry of any other purchaser.

Act of June 1, 1874, Sec. 1. That when an occupant of land, having color of title, in good faith has made valuable improvements thereon, and is, in the proper action, found not to be the rightful owner thereof, such occupant shall be entitled in the Federal courts to all the rights and remedies, and, upon instituting the proper proceedings, such relief as may be given or secured to him by the statutes of the State or Territory where the land lies, although the title of the plaintiff in the action may have been granted by the United States after said improvements were so made.

Claim filed by settler on land not proclaimed for sale.

SEC. 2265. Every claimant under the pre-emption law for land not yet proclaimed for sale is required to make known his claim in writing to the register of the proper land-office within three months from the time of the settlement, giving the designation of the tract and the time of settlement; otherwise his claim shall be forfeited and the tract awarded to the next settler, in the order of time, on the same tract of land, who has given such notice and otherwise complied with the conditions of the law.

Declaratory statement of settlers on unsurveyed lands when filed.

SEC. 2266. In regard to settlements which are authorized upon unsurveyed lands, the pre-emption claimant shall be in all cases required to file his declaratory statement within three months from the date of the receipt at the district land office of the approved plat of the township embracing such pre-emption settlement.

Pre-emption claimants; time of making proof and payment.

SEC. 2267. All claimants of pre-emption rights, under the two preceding sections, shall, when no shorter time is prescribed by law, make the proper proof and payment for the lands claimed within thirty months after the date prescribed therein, respectively, for filing their declaratory notices, has expired.

Extension of time in certain cases to persons in military and naval service.

SEC. 2268. Where a pre-emptor has taken the initiatory steps required by law in regard to actual settlement, and is called away from such settlement by being engaged in the military or naval service of the United States, and by reason of such absence is unable to appear at the district land-office to make before the register or receiver the affidavit, proof, and payment, respectively required by the preceding provisions of this chapter, the time for filing such affidavit and making final proof and entry or location shall be extended six months after the expiration of his term of service, upon satisfactory proof by affidavit, or the testimony of witnesses, that such pre-emptor is so in the service, being filed with the register of the land-office for the district in which his settlement is made.

Death before consummating claim; who to complete &c.

SEC. 2269. Where a party entitled to claim the benefits of the pre-emption laws dies before consummating his claim, by filing in due time all the papers essential to the establishment of the same, it shall be competent for the executor or administrator of the estate of such party, or one of the heirs, to file the necessary papers to complete the same; but the entry in such cases shall be made in favor of the heirs of the deceased pre-emptor, and a patent thereon shall cause the title to inure to such heirs, as if their names had been specially mentioned.

Non-compliance with laws caused by vacancy in office of register or receiver not to affect, &c.

SEC. 2270. Whenever the vacancy of the office either of register or receiver, or of both, renders it impossible for the claimant to comply with any requisition of the pre-emption laws within the appointed time, such vacancy shall not operate to the detriment of the party claiming, in respect to any matter essential to the establishment of his claim; but such requisition must be complied with within the same period after the disability is removed as would have been allowed had such disability not existed.

No pre-emption of lands sold but not confirmed by Land-Office.

SEC. 2271. The provisions of this chapter shall be so construed as not to confer on any one a right of pre-emption, by reason of a settlement made on a tract theretofore disposed of, when such disposal has not been confirmed by the General Land-Office, on account of any alleged defect therein.

Purchase by private entry after expiration of pre-emption right.

SEC. 2272. Nothing in the provisions of this chapter shall be construed to preclude any person, who may have filed a notice of intention to claim any tract of land by pre-emption, from the right allowed by law to others to purchase such tract by private entry after the expiration of the right of pre-emption.

When more than one settler, rights of appeals to Commissioner.

SEC. 2273. When two or more persons settle on the same tract of land, the right of pre-emption shall be in him who made the first settlement, provided such person conforms to the other provision of the law; and all questions as to the right of pre-emption arising between different settlers shall be determined by the register and receiver of the district within which the land is situated; and appeals from the decision of district officers, in cases of contest for the right of pre-emption, shall be made to the Commissioner of the General Land-Office, whose decision shall be final, unless appeal therefrom be taken to the Secretary of the Interior.

Settlements of two or more persons on same subdivision before survey.

SEC. 2274. When settlements have been made upon agricultural public lands of the United States, prior to the survey thereof, and it has been or shall be ascertained, after the public surveys have been extended over such lands, that two or more settlers have improvements upon the same legal subdivision, it shall be lawful for such setlers to make joint entry of their lands at the local land-office, or for either of said settlers to enter into contract with his co-settlers to convey to them their portion of said land after a patent is issued to him, and, after making said contract, to file a declaratory statement in his own name, and prove up and pay for said land, and proof of joint occupation by himself and others, and of such contract with them made, shall be equivalent to proof of sole occupation and pre-emption by the applicant: *Provided*, That in no case shall the amount patented under this section exceed one hundred and sixty acres, nor shall this section apply to lands not subject to homestead or pre-emption entry.

Settlements before survey on sections 16 or 36 deficiencies thereof.

SEC. 2275. Where settlements, with a view to pre-emption, have been made before the survey of the lands in the field, which are found to have been made on sections sixteen or thirty-six, those sections shall be subject to the pre-emption claim of such settler; and if they, or either of them, have been or shall be reserved or pledged for the use of schools or colleges in the State or Territory in which the lands lie, other lands of like quantity are appropriated in lieu of such as may be patented by pre-emptors; and other lands are also appropriated to compensate deficiencies for school purposes, where sections sixteen or thirty-six are fractional in quantity, or where one or both are wanting by reason of the township being fractional, or from any natural cause whatever.

Selections to supply deficiencies of school lands.

SEC. 2276. The lands appropriated by the preceding section shall be selected, within the same land-district, in accordance with the following principles of adjustment, to wit: For each township, or fractional township, containing a greater quantity of land than three-quarters of an entire township, one section; for a fractional township, containing a greater quantity of land than one-half, and not more than three-quarters, of a township, three-quarters of a section; for a fractional township, containing a greater quantity of land than one-quarter, and not more than one-half, of a township, one half-section; and for a fractional township, containing a greater quantity of land than one entire section, and not more than one-quarter of a township, one quarter section of land.

Military bounty land warrants receivable for pre-emption payments.

SEC. 2277. All warrants for military bounty-lands, which are issued under any law of the United States, shall be received in payment of pre-emption rights at the rate of one dollar and twenty-five cents per acre, for the quantity of land therein specified; but where the land is rated at one dollar and twenty-five cents per acre and does not exceed the area specified in the warrant, it must be taken in full satisfaction thereof.

Agricultural-college scrip re-

SEC. 2278. Agricultural-college scrip, issued to any State under the act approved July second, eighteen hundred and sixty-two, or acts amendatory thereof, shall be received from actual settlers in payment of pre-emption claims in the same manner and to the same extent as authorized in case of military bounty-land warrants, by the preceding section.

ceivable in payment of pre-emptions.

Pre emption limit along railroad lines.

Sec. 2279. No person shall have the right of pre-emption to more than one hundred and sixty acres along the line of railroads within the limits granted by any act of Congress.

> Act of June 22, 1874. That in the adjustment of all railroad land grants, whether made directly to any railroad company or to any State for railroad purposes, if any of the lands granted be found in the possession of an actual settler whose entry or filing has been allowed under the pre-emption or homestead laws of the United States subsequent to the time at which, by the decision of the land-office, the right of said road was declared to have attached to such lands, the grantees, upon a proper relinquishment of the lands so entered or filed for, shall be entitled to select an equal quantity of other lands in lieu thereof from any of the public lands not mineral and within the limits of the grant not otherwise appropriated at the date of selection, to which they shall receive title the same as originally granted. And any such entry or filings thus relieved from conflict may be perfected into complete title as if such lands had not been granted: *Provided*, That nothing herein contained shall in any manner be so construed as to enlarge or extend any grant to any such railroad or to extend to lands reserved in any land grant made for railroad purposes: *And provided further*, That this act shall not be construed so as in any manner to confirm or legalize any decision or rulings of the Interior Department under which lands have been certified to any railroad company when such lands have been entered by a pre-emption or homestead settler after the location of the line of the road and prior to the notice of the local land-office of the withdrawal of such lands from market.

Pre-emption rights on lands reserved for grants found invalid.

Sec. 2280. Any settler on lands heretofore reserved on account of claims under French, Spanish, or other grants, which have been or may be hereafter declared by the Supreme Court of the United States to be invalid, shall be entitled to all the rights of pre-emption granted by the preceding provisions of this chapter, after the lands have been released from reservation, in the same manner as if no reservation had existed.

Pre-emption rights on lands reserved for railroads.

Sec. 2281. All settlers on public lands which have been or may be withdrawn from market in consequence of proposed railroads, and who had settled thereon prior to such withdrawal, shall be entitled to pre-emption at the ordinary minimum to the lands settled on and cultivated by them; but they shall file the proper notices of their claims and make proof and payment as in other cases.

Sale of land not to be delayed, &c.

SEC. 2282. Nothing contained in this chapter shall delay the sale of any of the public lands beyond the time appointed by the proclamation of the President.

* * * *

Pre-emptions by counties for seats of justice.

SEC. 2286. There shall be granted to the several counties or parishes of each State and Territory, where there are public lands, at the minimum price for which public lands of the United States are sold, the right of pre-emption to one quarter-section of land, in each of the counties or parishes, in trust for such counties or parishes, respectively, for the establishment of seats of justice therein; but the proceeds of the sale of each of such quarter-section shall be appropriated for the purpose of erecting public buildings in the county or parish for which it is located, after deducting therefrom the amount originally paid for the same.[1] And the seat of justice for such counties or parishes, respectively, shall be fixed previously to a sale of the adjoining lands within the county or parish for which the same is located.

Where claimant of entry becomes register or receiver.

SEC. 2287. Any *bona fide* settler under the homestead or pre-emption laws of the United States who has filed the proper application to enter not to exceed one quarter-section of the public lands in any district land-office, and who has been subsequently appointed a register or receiver, may perfect the title to the land under the pre emption laws by furnishing the proofs and making the payments required by law, to the satisfaction of the Commissioner of the General Land-Office.

Right of transfer of settlers under homestead or pre-emption laws for certain public purposes.

SEC. 2288. Any person who has already settled or hereafter may settle on the public lands, either by pre-emption, or by virtue of the homestead law or any amendments thereto, shall have the right to transfer, by warranty against his own acts, any portion of his pre-emption or homestead for church, cemetery, or school purposes, or for the right of way of railroads across such pre-emption or homestead, and the transfer for such public purposes shall in no way vitiate the right to complete and perfect the title to their pre-emptions or homesteads.

CHAPTER FIVE.

Homesteads.

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Who may enter certain unappropriated lands.

SEC. 2289. Every person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who has filed his declaration of intention to become such, as required by the naturalization laws, shall be entitled to enter one quarter section or a less quantity of unappropriated public lands, upon which such person may have filed a pre-emption claim, or which may, at the time the application is made, be subject to pre-emption at one dollar and twenty-five cents per acre; or eighty acres or less of such unappropriated lands, at two dollars and fifty cents per acre, to be located in a body, in conformity to the legal subdivisions of the public lands, and after the same have been surveyed. And every person owning and residing on land may, under the provisions of this section, enter other land lying contiguous to his land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres.

Mode of procedure.

SEC. 2290. The person applying for the benefit of the preceeding section shall, upon application to the register of the land-office in which he is about to make such entry, make affidavit before the register or receiver that he is the head of a family, or is twenty-one years or more of age, or has performed service in the Army or Navy of the United States, and that such application is made for his exclusive use and benefit, and that his entry is made for the purpose of actual settlement and cultivation, and not either directly or indirectly for the use or benefit of any other person; and upon filing such affidavit with the register or receiver, on payment of five dollars when the entry is of not more than eighty acres, and on payment of ten dollars when the entry is for more than eighty acres, he shall thereupon be permitted to enter the amount of land specified.

> Act of June 22, 1874. That in all cases of public lands heretofore made under the act entitled "An act to secure homesteads to actual settlers on the public domain," approved May twentieth, eighteen hundred and sixty-two, where the affidavit required by section two of said act was made before the clerk of the county of the residence of the person making the entry, without having first made the settlement and improvement required by the provisions of section three of the act entitled "An act amendatory of the homestead law, and for other purposes," approved March twenty-first, eighteen hundred and sixty four, said affidavits be, and the same are hereby, legalized and confirmed, so as to have the same force and validity as if the provisions of said last-named act had been strictly complied with: *Provided*, That nothing in this act shall have the effect or be construed to impair the valid and paramount adverse rights of any person or corporation to any of such lands, except in so far as the right of Congress to protect the claims or rights of homestead settlers upon lands within the limits of grants of lands to any railroad company may have been reserved in the acts making such grants and be now lawfully existing.

Certificate and patent, when given and issued.

SEC. 2291. No certificate, however, shall be given, or patent issued therefor, until the expiration of five years from the date of such entry; and if at the expira- of such time, or at any time within two years thereafter, the person making such entry; or if he be dead, his widow; or in case of her death, his heirs or devisee; or in case of a widow making such entry, her heirs or devisee, in case of her death, proves by two credible witnesses that he, she, or they have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit, and makes affidavit that no part of such land has been alienated, except as provided in section twenty-two hundred and eighty-eight, and that he, she, or they will bear true allegiance to the government of the United States; then, in such case, he she, or they, if at that time citizens of the United States, shall be entitled to a patent, as in other cases provided by law.

SEC. 2292. In case of the death of both father and mother, leaving an infant child or children under twenty-one years of age, the right and fee shall inure to the benefit of such infant child or children; and the executor, administrator or guardian may, at any time within two years after the death of the surviving parent, and in accordance with the laws of the State in which such children, for the time being, have their domicile, sell the land for the benefit of such infants, but for no other purpose; and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States on the payment of the office-fees and sum of money above specified.

When rights inure to the benefit of infant children.

SEC. 2293. In case of any person desirous of availing himself of the benefits of this chapter; but who by reason of actual service in the military or naval service of the United States, is unable to do the personal preliminary acts at the district land-office which the preceding sections require; and whose family, or some member thereof, is residing on the land which he desires to enter, and upon which a *bona fide* improvement and settlement have been made, such person may make the affidavit required by law before the officer commanding in the branch of the service in which the party is engaged which affidavit shall be as binding in law, and with like penalties, as if taken before the register or receiver; and upon such affidavit being filed with the register by the wife or other representative of the party, the same shall become effective from the date of such filing, provided the application and affidavit are accompanied by the fee and commissions as required by law.

Persons in military or naval service, when and before whom to make affidavit.

SEC. 2294. In any case in which the applicant for the benefit of the homestead, and whose family or some member thereof, is residing on the land which he desires to enter, and upon which a *bona fide* improvement and settlement have been made, is prevented, by reason of distance, bodily infirmity, or other good cause, from personal attendance at the district land-office, it may be lawful for him to make the affidavit required by law before the clerk of the court for the county in which the applicant is an actual resident, and to transmit the same, with the fee and commissions, to the register and receiver.

When persons may make affidavit before clerk of court.

SEC. 2295. The register of the land-office shall note all applications under the provisions of this chapter, on the tract-books and plats of his office, and keep a register of all such entries, and make return thereof to the General Land Office, together with the proof upon which they have been founded.

Record of applications.

Homestead lands not to be subject to prior debts.

SEC. 2296. No lands acquired under the provisions of this chapter shall in any event become liable to the satisfaction of any debt contracted prior to the issuing of the patent therefor.

When lands entered for homestead revert to Government.

SEC. 2297. If, at any time after the filing of the affidavit, as required in section twenty-two hundred and ninety, and before the expiration of the five years mentioned in section twenty-two hundred and ninety-one, it is proved, after due notice to the settler, to the satisfaction of the register of the land-office, that the person having filed such affidavit has actually changed his residence, or abandoned the land for more than six months at any time, then and in that event the land so entered shall revert to the Government.

Limitation of homestead.

SEC. 2298. No person shall be permitted to acquire title to more than one quarter-section under the provisions of this chapter.

Existing pre-emption rights not impaired.

SEC. 2299. Nothing contained in this chapter shall be so construed as to impair or interfere in any manner with existing pre-emption rights; and all persons who may have filed their applications for a pre-emption right prior to the twentieth day of May, eighteen hundred and sixty-two, shall be entitled to all the privileges of this chapter.

What minors may have the privileges of this chapter.

SEC. 2300. No person who has served, or may hereafter serve, for a period not less than fourteen days in the Army or Navy of the United States, either regular or volunteer, under the laws thereof, during the existance of an actual war, domestic or foreign, shall be deprived of the benefits of this chapter on account of not having attained the age of twenty-one years.

Payment before expiration of five years; rights of applicant.

SEC. 2301. Nothing in this chapter shall be so construed as to prevent any person who has availed himself of the benefits of section twenty-two hundred and eighty-nine, from paying the minimum price for the quantity of land so entered, at any time before the expiration of the five years, and obtaining a patent therefor from the Government, as in other cases directed by law, on making proof of settlement and cultivation as provided by law, granting pre-emption rights.

No distinction on account of race or color, &c.

SEC. 2302. No distinction shall be made in the construction or execution of this chapter, on account of race or color; nor shall any mineral lands be liable to entry and settlement under its provisions.

Soldiers and sailors homesteads.

SEC. 2304. Every private soldier and officer who has served in the Army of the United States during the recent rebellion, for ninety days, and who was honorably discharged, and has remained loyal to the government, including the troops mustered into the service of the United States by virtue of the third section of an act approved February thirteen, eighteen hundred and sixty-two, and every seaman, marine, and officer who has served in the Navy of the United States, or in the Marine Corps, during the rebellion, for ninety days, and who was honorably discharged, and has remained loyal to the Government, shall on compliance with the provisions of this chapter, as hereinafter modified, be entitled to enter upon and receive patents for a quantity of public lands not exceeding one hundred and sixty acres, or one quarter-section, to be taken in compact form, according to legal subdivisions, including the alternate reserved sections of public lands along the line of any railroad or other public work, not otherwise reserved or appropriated, and other lands subject to entry under the homestead laws of the United States; but such homestead settler shall be allowed six months after locating his homestead, and filing his declaratory statement, within which to make his entry and commence his settlement and improvement.

Deduction of military and naval service from time, &c.

SEC. 2305. The time which the homestead settler has served in the Army, Navy, or Marine Corps shall be deducted from the time heretofore required to perfect title, or if discharged on account of wounds received or disability incurred in the line of duty, then the term of enlistment shall be deducted from the time heretofore required to perfect title, without reference to the length of time he may have served; but no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his homestead for a period of at least one year after he shall have commenced his improvements.

Persons who have entered less than 160 acres, rights of.

SEC. 2306. Every person entitled, under the provisions of section twenty-three hundred and four, to enter a homestead who may have heretofore entered, under the homestead laws, a quantity of land less than one hundred and sixty acres, shall be permitted to enter so much land as, when added to the quantity previously entered, shall not exceed one hundred and sixty acres.

Widow and minor children of persons entitled to homestead, &c.

SEC. 2307. In case of the death of any person who would be entitled to a homestead under the provisions of section twenty-three hundred and four, his widow, if unmarried, or in case of her death or marriage, then his minor orphan children, by a guardian duly appointed and officially accredited at the Department of the Interior, shall be entitled to all the benefits enumerated in this chapter, subject to all the provisions as to settlement and improvements therein contained; but if such person died during his term of enlistment, the whole term of his enlistment shall be deducted from the time heretofore required to perfect the title.

Actual service in the Army or Navy equivalent to residence, &c.

SEC. 2308. Where a party at the date of his entry of a tract of land under the homestead laws, or subsequently thereto, was actually enlisted and employed in the Army or Navy of the United States, his services therein shall, in the administration of such homestead laws, be construed to be equivalent, to all intents and purposes, to a residence for the same length of time upon the tract so entered. And if his entry has been canceled by reason of his absence from such tract while in the military or naval service of the United States, and such tract has not been disposed of, his entry shall be restored; but if such tract has been disposed of, the party may enter another tract subject to entry under the homestead laws, and his right to a patent therefor may be determined by the proofs touching his residence and cultivation of the first tract and his absence therefrom in such service.

Who may enter by agent.

SEC. 2309. Every soldier, sailor, marine, officer, or other person coming within the provisions of section twenty-three hundred and four, may, as well by an agent as in person, enter upon such homestead by filing a declaratory statement, as in pre-emption cases; but such claimant in person shall within the time prescribed make his actual entry, commence settlements and improvements on the same, and thereafter fulfill all the requirements of law.

* * * * *

Cultivation of trees on homestead tracts.

SEC. 2317. Every person having a homestead on the public domain, under the provisions of this chapter, who, at the end of the third year of his residence thereon, shall have had under cultivation, for two years, one acre of timber, the trees thereon not being more than twelve feet apart each way, and in a good, thrifty condition, for each and every sixteen acres of such homestead, shall, upon due proof of the fact by two credible witnesses, receive his patent for such homestead.

See act of March 13, 1874. An act to amend an act entitled "An act to encourage the growth of trees, on Western prairies."

CHAPTER SIX.

Mineral Lands and Mining Resources.

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2352. Rights reserved.

SEC. 2318. In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.

Mineral lands reserved.

SEC. 2319. All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by aw, and according to the local customs or rules of min-

Mineral lands open to purchase by citizens.

ers in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

Length of mining claims upon veins or lodes.

SEC. 2320. Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the tenth day of May, eighteen hundred and seventy two, render such limitation necessary. The end-lines of each claim shall be parallel to each other.

Proof of citizenship.

SEC. 2321. Proof of citizenship, under this chapter, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge, or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any State or Territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.

Locators' rights of possession and enjoyment.

SEC. 2322. The locators of all mining locations heretofore made or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the tenth day of May eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with State, Territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges, throughout their entire depth, the top or apex of which lies inside of such surface-lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outsid the vertical side-lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end-lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

Owners of tunnels rights of.

SEC. 2323. Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.

Regulations made by miners.

SEC. 2324. The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permament monument as will identifiy the claim. On each claim located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the tenth day of June, eighteen hundred and seventy-four, and each year thereafter, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his co-owners who have made the required expenditures.

Act of June 6, 1874. That the provisions of the fifth section of the act entitled "An act to promote the development of the mining resources of the United States," passed May tenth, eighteen hundred and seventy-two, which requires expenditures of labor and improvements on claims located prior to the passage of said act, are hereby so amended that the time for the first annual expenditure on claims located prior to the passage of said act shall be extended to the first day of January, eighteen hundred and seventy-five.

Patents for mineral lands, how obtained.

SEC. 2325. A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has, or have, complied with the terms of this chapter, may file in the proper land-office an application for a patent, under oath, showing such compliance, together with a plat and field-notes of the claim or claims in common, made by or under the direction of the United States surveyor-general, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land-office, and shall thereupon be entitled to a patent for the land, in the manner following: The Register of the land-office, upon the filing of such application, plat, field-notes, notices and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the register a certificate of the United States surveyor-general that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permament monuments as shall identify the claim, and furnish an accurate description, to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register and the receiver of the proper land-office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter.

Adverse claim, proceedings on.

SEC. 2326. Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment-roll with the register of the land-office, together with the certificate of the surveyor-general that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment-roll shall be certified by the register to the Commissioner of the General Land-Office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court, that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim with the proper fees, and file the certificate and description by the surveyor-general, whereupon the register shall certify the proceedings and judgment-roll to the Commissioner of the General Land-Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of the title conveyed by a patent for a mining claim to any person whatever.

Description of vein claims on surveyed and unsurveyed lands.

SEC. 2327. The description of vein or lode claims, upon surveyed lands, shall designate the location of the claim with reference to the lines of the public surveys, but need not conform therewith; but where a patent shall be issued for claims upon unsurveyed lands, the surveyor-general, in extending the surveys, shall adjust the same to the boundaries of such patented claim, according to the plat or description thereof, but so as in no case to interfere with or change the location of any such patented claim.

Pending applications, existing rights.

SEC. 2328. Applications for patents for mining claims under former laws now pending may be prosecuted to a final decision in the General Land-Office; but in such cases where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this chapter; and all patents for mining claims upon veins or lodes heretofore issued shall convey all the rights and privileges conferred by this chapter where no adverse rights existed on the tenth day of May, eighteen hundred and seventy-two.

SEC. 2329. Claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.

Conformity of placer claims to surveys, limit of.

SEC. 2330. Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer-claim, made after the ninth day of July, eighteen hundred and seventy, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any *bona fide* pre-emption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any *bona fide* settler to any purchaser.

Subdivisions of ten acre tracts. maximum of placer locations.

SEC. 2331. Where placer claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer mining claims located after the tenth day of May, eighteen hundred and seventy two, shall conform as near as practicable with the United States system of public land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer claims can not be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral land in any legal subdivision a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead or pre-emption purposes.

Conformity of placer claims to surveys, limitation of claims.

SEC. 2332 Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim; but nothing in this chapter shall be deemed to impair any lien which

What evidence of possession, &c., to establish a right to a patent.

may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent.

Proceedings for patent for placer claim, &c.

SEC. 2333. Where the same person, association or corporation is in possession of a placer claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer claim, subject to the provisions of this chapter, including such vein or lode, upon the payment of five dollars per acre for such vein or lode claim, and twenty-five feet of surface on each side thereof. The remainder of the placer claim, or any placer claim not embracing any vein or lode claim, shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section twenty-three hundred and twenty, is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof.

Surveyor-general to appoint surveyors of mining claims, &c.

SEC. 2334. The surveyor-general of the United States may appoint in each land-district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining claims. The expenses of the survey of vein or lode claims, and the survey and subdivision of placer claims into smaller quantities than one hundred and sixty acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The Commissioner of the General Land-Office shall also have power to establish the maximum charges for surveys and publication of notices under this chapter; and, in case of excessive charges for publication, he may designate any newspaper published in a land-district where mines are situated for the publication of mining notices in such district, and fix the rates to be charged by such paper; and, to the end that the Commissioner may be fully informed on the subject, each applicant shall file with the register a sworn statement of all charges and fees paid by such applicant for publication and surveys, together with all fees and money paid the register and the receiver of the land-office, which statement shall be transmitted, with the other papers in the case, to the Commissioner of the General Land-Office.

Verification of affidavits, &c.

SEC. 2335. All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within the land-district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register and receiver of the land-office. In cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken as herein provided on personal notice of at least ten days to the opposing party; or if such party cannot be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the register of the land-office as published nearest to the location of such land; and the register shall require proof that such notice has been given.

Where veins intersect, &c.

SEC. 2336. Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

Patents for non-mineral lands, &c.

SEC. 2337. Where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface-ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as one applicable to veins or lodes; but no location hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz-mill or reduction-works, not owning a mine in connection therewith, may also receive a patent for his mill-site, as provided in this section.

What conditions of sale may be made by local Legislature.

SEC. 2338. As a condition of sale, in the absence of necessary legislation by Congress, the local legislature of any State or Territory may provide rules for working mines, involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.

Vested rights to use of water for mining, &c., right of way for canals.

SEC. 2339. Whenever by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

Patents pre-emptions, and homesteads subject to vested and accrued water rights

SEC. 2340. All patents granted, or pre-emption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by the preceding section.

Mineral-lands in which no valuable mines are discovered, open to homesteads.

SEC. 2341. Wherever, upon the lands heretofore designated as mineral lands, which have been excluded from survey and sale, there have been homesteads made by citizens of the United States, or persons who have declared their intention to become citizens, which homesteads have been made, improved, and used for agricultural purposes, and upon which there have been no valuable mines of gold, silver, cinnabar, or copper discovered, and which are properly agricultural lands, the settlers or owners of such homesteads shall have a right of pre emption thereto. and shall be entitled to purchase the same at the price of one dollar and twenty-five cents per acre, and in quantity not to exceed one hundred and sixty acres; or they may avail themselves of the provisions of chapter five of this Title, relating to "HOMESTEADS."

Mineral lands how set apart as agricultural lands.

SEC. 2342. Upon the survey of the lands described in the preceding section, the Secretary of the Interior may designate and set apart such portions of the same as are clearly agricultural lands, which lands shall thereafter be subject to pre-emption and sale as other public lands, and be subject to all the laws and regulations applicable to the same.

SEC. 2343. The President is authorized to establish additional land-districts, and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of this chapter.

Additional land districts and officers, power of the President to provide.

SEC. 2344. Nothing contained in this chapter shall be construed to impair, in any way, rights or interests in mining property acquired under existing laws; nor to affect the provisions of the act entitled "An act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada," approved July twenty-five, eighteen hundred and sixty-six.

Provisions of this chapter not to affect certain rights.

SEC. 2345. The provisions of the preceding sections of this chapter shall not apply to the mineral lands situated in the State of Michigan, Wisconsin, and Minnesota, which are declared free and open to exploration and purchase, according to legal subdivisions, in like manner as before the tenth day of May, eighteen hundred and seventy-two. And any *bona fide* entries of such lands within the States named since the tenth day of May, eighteen hundred and seventy-two, may be patented without reference to any of the foregoing provisions of this chapter. Such lands shall be offered for public sale in the same manner, at the same minimum price, and under the same rights of pre-emption as other public lands.

Mineral lands in certain States excepted.

SEC. 2346. No act passed at the first session of the Thirty-eighth Congress, granting lands to States or corporations to aid in the construction of roads or for other purposes, or to extend the time of grants made prior to the thirtieth day of January, eighteen hundred and sixty-five, shall be so construed as to embrace mineral lands, which in all cases are reserved exclusively to the United States, unless otherwise specially provided in the act or acts making the grant.

Grants of lands to States or corporations, not to include mineral lands.

SEC. 2347. Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land-office, have the right to enter by legal subdivisions, any quantity of vacant coal lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the receiver of not less than ten dollars per acre for such lands, where the same shall

Entry of coal lands.

be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road.

Pre-emption of coal lands.

SEC. 2348. Any person or association of persons severally qualified, as above provided, who have opened and improved, or shall hereafter open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference right of entry, under the preceding section, of the mines so opened and improved: *Provided*, That when any association of not less than four persons, severally qualified as above provided, shall have expended not less than five thousand dollars in working and improving any such mine or mines, such association may enter not exceeding six hundred and forty acres, including such mining improvements.

Pre-emption claims of coal land to be presented within sixty days, &c.

SEC. 2349. All claims under the preceding section must be presented to the register of the proper land district within sixty days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor; but when the township plat is not on file at the date of such improvement, filing must be made within sixty days from the receipt of such plat at the district office; and where the improvements shall have been made prior to the expiration of three months from the third day of March, eighteen hundred and seventy-three, sixty days from the expiration of such three months shall be allowed for the filing of a declaratory statement, and no sale under the provisions of this section shall be allowed until the expiration of six months from the third day of March, eighteen hundred and seventy-three.

Only one entry allowed.

SEC. 2350. The three preceding sections shall be held to authorize only one entry by the same person or association of persons; and no association of persons any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such sections shall enter or hold any other lands under their provisions; and all persons claiming under section twenty-three hundred and forty-eight shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice, or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.

SEC. 2351. In case of conflicting claims upon coal lands where the improvements shall be commenced, after the third day of March, eighteen hundred and seventy-three, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference-right to purchase. And also where improvements have already been made prior to the third day of March, eighteen hundred and seventy-three, division of the land claimed may be made by legal sub-divisions, to include, as near as may be, the valuable improvements of the respective parties. The Commissioner of the General Land-Office is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and the four preceeding sections.

Conflicting claim.

Rights reserved.

SEC. 2352. Nothing in the five preceeding sections shall be construed to destroy or impair any rights which may have attached prior to the third day of march, eighteen hundred and seventy-three, or to authorize the sale of lands valuable for mines of gold, silver, or copper.

THE
REVISED AND COMPILED
LAWS
OF IDAHO TERRITORY.

AN ACT
TO
Regulate Proceedings in Civil Cases in the Courts of Justice in Idaho Territory.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

CHAPTER ONE.

Of the form of Civil Actions and of the Parties thereto.

SECTION 1. Only one form of action.
2. Parties designated.
3. Question of fact.
4. Action, in whose name.
5. Set-off, when not prejudiced.
6. Action by Executor, &c.
7. When married woman is party, exceptions.
9. Infant and Guardian.
11. Injury to child, &c.
12. Plaintiff, who may be joined.
13. Defendant, who may be made.
14. Parties, who to be joined.
15. Separately liable, may be joined.
16. Death of party or transfer of interest.
17. Controversy, when court to determine.

Only one form of action.

SEC. 1. There shall be in this Territory but one form of Civil Action for the enforcement or protection of private rights, and the redress or prevention of private wrongs, which shall be the same at law and in equity.

Parties designated. SEC. 2. In such action, the party complaining shall be known as the plaintiff, and the the adverse party as the defendant.

Question of fact. SEC. 3. When a question of fact, not put in issue by the pleadings, is to be tried by a jury, an order for the trial may be made, stating distinctly and plainly the question of fact to be tried; and such order shall be the only authority necessary for a trial.

Action, in whose name. SEC. 4. Every action shall be prosecuted in the name of the real party in interest, except as otherwise provided in this Act.

Set-off, when not prejudiced. SEC. 5. In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defense, existing at the time of, or before notice of the assignment; but this section shall not apply to a negotiable promissory note, or bill of exchange, transferred in good faith, and upon good consideration, before due.

Action by executor &c SEC. 6. An Executor or Administrator, trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person or persons for whose benefit the action is prosecuted. A trustee of an express trust within the meaning of this section, shall be construed to include a person with whom, or in whose name, a contract is made for the benefit of another.

When married woman is party, excedtions. SEC. 7. When a married woman is a party, her husband shall be joined with her; except that when the action concerns her separate property, she may sue alone; when the action is between herself and her husband, she may sue or be sued alone.

SEC. 8. If a husband and wife are sued together, the wife may defend for her own right.

Infant and guardian. SEC. 9. When an infant is a party, he shall appear by guardian, who may be appointed by the court in which the action is prosecuted, or by a Judge thereof, or a Probate Judge.

SEC. 10. The guardian shall be appointed as follows: *First*—When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years; or if under that age, upon the application of a relative or friend of the infant. *Second*—When the infant is defendant, upon the application of the infant, if he be of the age of fourteen years, and apply within ten days after the service of the summons; if he be under the age of fourteen, or neglect so to apply, then upon the application of any other party to the action, or of a relative or friend of the infant.

Injury to child, &c.

SEC. 11. A father, or, in case of his death or desertion of his family, the mother, may maintain an action for the injury or death of a child; and a guardian for the injury or death of his ward.

Plaintiff, who may be joined.

SEC. 12. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except when otherwise provided in this Act.

Defendant, who may be made.

SEC. 13. Any person may be made a defendant, who has, or claims an interest in the controversy, adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein.

Parties, who to be joined.

SEC. 14. Of the parties to the action, those who are united in interest shall be joined as plaintiffs, or defendants, but if the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

Separately liable may be joined.

SEC. 15. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, and sureties on the same or separate instruments, may all, or any of them be included in the same action, at the option of the plaintiff.

Death of party, or transfer of interest.

SEC. 16. An action shall not abate by the death, or other disability of the party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death, or other disability, of a party, the court, on motion, may allow the action to be continued by or against his representative or successor in interest. In case of any other transfer of interest, the action may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action.

Controversy when court to determine.

SEC. 17. The court may determine any controversy between parties before it when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court shall order them to be brought in.

CHAPTER TWO.

Place of trial of Civil Actions.

SECTION 18, Where the subject matter is situated.
19. Where cause of action arose.
20. Where parties reside.
21. Changing place of trial.

Where the subject matter is situated.

SEC. 18. Actions for the following causes shall be tried in the county in which the subject of the action, or some part thereof, is situated, subject to the power of the court to change the place of trial, as provided in this Act: *First*—For the recovery of real property, or of an estate or interest therein, or for the determination, in any form, of such right or interest or for injuries to real property. *Second*—For the partition of real property. *Third*—For the foreclosure of a mortgage of real property; *Provided*, That when such real property is situate partly in one county and partly in another, the plaintiff may select either of said counties, and the county so selected shall be the proper county for the trial of any or all of such actions as are mentioned in the first, second and third subdivisions of this section.

Where cause of action arose.

SEC. 19. Actions for the following causes shall be tried in the county where the cause, or some part thereof arose, subject to the like power of the court to change the place of trial; *First*—For the recovery of a penalty or forfeiture imposed by statute; except, that when it is imposed for an offense committed on a lake, river, or other stream of water, situated in two or more counties, the action may be brought in any county bordering on such lake, river, or other stream, and opposite the place where the offense was committed. *Second*—Against a public officer, or person especially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who, by his command, or in his aid, does anything touching the duties of such officer.

Where parties reside.

SEC. 20. In all other cases the action shall be tried in the county in which the defendants, or any of them, may reside at the commencement of the action; or, if none of the defendants reside in this Territory; or, if residing in this Territory, the county in which they so reside be unknown to the plaintiff, the same may be tried in any county which the plaintiff may designate in his complaint; and if any defendant or defendants, may be about to depart from the Territory, such action may be tried in any county where either of the parties reside or may be found, or service be had; subject, however, to the power of the court to change the place of trial as provided in this act.

Changing place of trial.

SEC. 21. The court may on motion, change the place of trial in the following cases: *First*—When the county designated in the complaint is not the proper county. *Second*—When there is reason to believe that an impartial trial cannot be had therein. *Third*—When the convenience of witnesses, and the ends of justice would be promoted by the change. *Fourth*—When, from any cause, the Judge is disqualified from acting in the action.

CHAPTER THREE.

Manner of Commencing Actions.

SECTION 22. How commenced in certain courts.
23. Complaint, how endorsed.
24. Form of summons.
25. Answer, when to be made.
26. Notice to be inserted in summons.
27. Notice of pendency of suit.
28. Summons, by whom served.
29. Summons, how served.
30. Service by publication.
31. Publication of summons.
32. Service when action is against two or more defendants.
33. Proof of service.
35. Jurisdiction, when it attaches.

How commenced in certain courts.

SEC. 22. Civil actions in the District Court, and the Probate Courts, shall be commenced by the filing of a complaint with the clerk of the court in which the action is brought; *Provided*, That after the filing of the complaint, a defendant in the action may appear, answer or demur, whether the summons has been issued or not, and such appearance, answer or demurrer, be deemed a waiver of summons.

Complaint, how endorsed.

SEC. 23. The clerk shall indorse on the complaint the day, month, and year the same is filed; and, at any time within one year after the filing of the same, the plaintiff may have a summons issued. The summons shall be signed by the clerk, and directed to the defendant, and be issued under the seal of the court.

Form of summons.

SEC. 24. The summons shall state the parties to the action, the court in which it is brought, the county in which the complaint is filed, the cause and general nature of the action, and require the defendant to appear and answer the complaint within the time mentioned in the next section, after the service of the summons, exclusive of the day of service, or that judgment by default will be taken against him, according to the prayer of the complaint, briefly stating the sum of money or other relief demanded in the complaint; and the clerk shall also indorse on the summons, the names of the plaintiff's attorneys.

Answer, when to be made.

SEC. 25. The time in which the summons shall require the defendant to answer the complaint shall be as follows: *First*—If the defendant is served within the county in which the action is brought, ten days. *Second*, If the defendant is served out of the county, but in the judicial district in which the action is brought, twenty days. *Third*, In all other cases thirty days.

Notice to be inserted in summons.

SEC. 26. There shall also be inserted in the summons a notice, in substance as follows: *First*—In an action arising on contract for the recovery only of money or damages, that the plaintiff will take judgment for a sum specified therein, if the defendant fail to answer the complaint. *Second*—In other actions, that if the defendant fail to answer the complaint, the plaintiff will apply to the court for the relief demanded therein.

Notice of pendency of suit.

SEC. 27. In any action affecting real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterward, may file with the recorder of the county in which the property is situated, a notice of the pendency of the action containing the names of the parties to, and the object of the action, and a description of the property in that county affected thereby; and the defendants may also, in such notice, state the nature and extent of the relief claimed in the answer. From the time of filing only, shall the pendency of the action or defense be constructive notice to a purchaser or incumbrancer of the property affected thereby.

Summons by whom served.

SEC. 28. The summons shall be served by the Sheriff of the county where the defendant is found, or by his deputy, or by a person specially appointed by him, or approved by a judge of the court in which the action is brought, or by any male citizen of the United States over twenty-one years of age who is competent to be a witness on the trial of the action, except as hereinafter provided; a copy of the complaint, certified by the clerk or by the attorney in the action, shall be served with the summons. When the summons is served by the sheriff or his deputy, it shall be returned with the certificate or affidavit of the officer of its service, and of the service of the copy of the complaint, to the office of the clerk from which the summons issued, with the affidavit of such person, of its service, and of the service of a copy of the complaint. If there be more than one defendant in the action. and such defendant or a part of them reside within the county, a copy of the complaint as to those residing within the county need be served on only one of the defendants residing within the county.

Summons how served.

SEC. 29. The summons shall be served by delivering a copy thereof, as follows:

First—If the suit be against a corporation, to the president or other head of the corporation, secretary, cashier or managing agent thereof.

Second—If the suit be against a foreign corporation, or a non-resident joint stock company, or other non-resident association doing business within the Territory, to an agent, cashier or secretary thereof.

Third—If against a minor under the age of fourteen years, to such minor personally, and also to his father, mother or guardian; or if there be none within the Territory, then to any person having the care or control of such minor or with whom he resides, or in whose service he is employed.

Fourth—If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, to such guardian.

Fifth—In all other cases, to the defendant personally.

Service by publication;

SEC. 30. When the person on whom the service is to be made, resides out of the Territory, or has departed from the Territory, or cannot after due dilligence, be found within the Territory, or conceals himself to avoid the service of summons, and the fact shall appear by affidavit, to the satisfaction of the court, or a judge thereof, or a probate judge, and it shall, in like manner, appear that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action, such court or judge may grant an order that the service be made by publication of the summons.

Publication of summons.

SEC. 31. The order shall direct the publication to be made in a newspaper to be designated as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, at least, once a week: *Provided*, That the publication against a defendant being or residing either in the States of California, Oregon or Nevada, or the Territories of Utah, Arizona, Washington, Montana or New Mexico, shall not be less than one month; and against a defendant residing out of this Territory or absent therefrom, or out of either of the said States or Territories specified herein shall not be less than two months. In case of publication, where the residence of the non-resident or absent defendant is known, the court or judge shall also direct a copy of the summons and complaint to be forthwith deposited in the post office, directed to the person to be served at his place of residence or the nearest post office thereto. When publication is ordered, personal service of a copy of the summons and complaint out of the Territory shall be equivalent to publication, and deposit in the post office. In either case the service of the summons shall be deemed complete at the expiration of the time prescribed by the order of publication.

Proceedings where service is made only on some of several defendants.

SEC. 32. When the action is against two or more defendants, and the summons is served on one or more, but not on all of them, the plaintiff may proceed as follows:

First—If the action be against the defendants jointly indebted upon a contract he may proceed against the defendant served, unless the court otherwise direct, and if he recover judgement it may be entered against all the defendants thus jointly indebted, so far only as that it may be enforced against the joint property of all, and the separate property of the defendant served; or,

Second. If the action be against defendants severally liable, he may proceed against the defendants served, in the same manner as if they were the only defendants.

Proof of service.

SEC. 33. Proof of the service of the summons shall be as follows:

First If served by the sheriff or his deputy, the affidavit or certificate of such sheriff or deputy; or, *Second,* If by any other person, his affidavit thereof; or, *Third,* In case of publication, the affidavit of the printer, or his foreman, or principal clerk, showing the same; and an affidavit of a deposit of a copy of the summons in the post office, if the same shall have been deposited; or, *Fourth,* The written admission of the defendant.

SEC. 34. In case of service otherwise than by publication, the certificate or affidavit shall state the time, place, and manner of the service.

Jurisdiction, when it attaches.

SEC. 35. From the time of the service of the summons and copy of complaint in a civil action, the court shall be deemed to have acquired jurisdiction, and to have control of all the subsequent proceedings. A voluntary appearance of a defendant shall be equivalent to personal service of the summons upon him.

CHAPTER FOUR.

Pleadings.

SECTION 36. Pleadings defined.

SECTION 37. Forms of pleadings.
38. Complaint, answer and demurrer.
39. Complaint, what to contain.
40. Demurrer to.
42. May demur and answer.
43. Amending complaint.
44. Objections to, by answer.
45. Waiver of objections to.
46. Answer what to contain
47. Counter claims and cross demands.
49. Several defenses may be set up.
50. Demurrer to answer, sham pleadings.
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64. Several causes of action in one complaint.
65. Allegations when taken as true.
66. Material allegations.
67. Answer after demurrer.
68. Amendment of pleadings and time for answering.
69. Plaintiff ignorant of defendants' name.
70. Construction of pleadings.
71. Error when to be designated.

Pleadings defined.

SEC. 36. The pleadings are the formal allegations by the parties of their respective claims and defenses, for the judgment of the court.

SEC. 37. All the forms of pleadings in civil actions and the rules by which the sufficiency of the pleadings shall be determined, shall be those prescribed in this act.

SEC. 38. The only pleadings on the part of the plaintiff shall be the complaint, or demurrer to the defendants answer; and the only pleadings on the part of the defendant shall be the answer, or demurrer to the plaintiffs' complaint. The demurrers of the parties and the answer of the defendant shall be filed with the clerk, and a copy thereof served upon the adverse party or his attorney. *Provided*, That if the adverse party or his attorney reside out of the county, the service may be made by mail.

Forms of pleadings.

SEC. 39. The complaint shall contain; *First*, the title of the action specifying the name of the court and the name of the county in which the action is brought, and the names of the parties to the action, plaintiff and defendant; *Second*, A statement of the facts constituting the cause of action, in ordinary and concise language; *Third*, A demand of the relief which the plaintiff claims.

If the recovery of money, or damages be demanded, the amount thereof shall be stated.

Demurrer to.

SEC. 40. The defendant may demur to the complaint within the time required in the summons to answer when it appears upon the face thereof, either: *First* That the court has no jurisdiction of the person of the defendant, or the subject matter of the action; or, *Second*, That the plaintiff has not legal capacity to sue; or, *Third*, That there is another action pending between the same parties for the same cause; or *Fourth*, That there is a defect or misjoinder of parties plaintiff or defendant; or, *Fifth*, That several causes of action have been improperly united; or, *Sixth*, That the complaint does not state facts sufficient to constitute a cause of action; or, *Seventh*, That the complaint is ambiguous, unintelligible, or uncertain.

SEC. 41. The demurrer shall distinctly specify the ground upon which any objections to the complaint are taken; unless it do so, it may be disregarded.

May demur and answer.

SEC. 42. The defendant may demur to the whole complaint, or to one or more of several causes of action stated therein, and answer the residue, or may demur and answer at the same time.

Amending complaint.

SEC. 43. If the complaint be amended, a copy of the amendments shall be filed, or the court may, in its discretion, require the complaint as amended to be filed, and a copy of the amendments shall be served upon every defendant to be affected thereby, or upon his attorney, if he has appeared by attorney; the defendant shall answer in such time as may be ordered by the court, and judgment by default may be entered upon failure to answer, as in other cases.

Objections to by answer.

SEC. 44. When any of the matters enumerated in section fifty, do not appear upon the face of the complaint, the objection may be taken by answer.

Waiver of objections to.

SEC. 45. If no such objection be taken, either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

Answer what to contain.

SEC. 46. The answer of the defendant shall contain: *First*, if the complaint be verified, a specific denial to each allegation of the complaint controverted by the defendant, or a denial thereof, according to his information and belief; if the complaint be not verified, then a general denial to each of said allegations, but a general denial shall only put in issue the material and express allegations of the complaint. *Second*, A statement of any new matter or counter-claim, constituting a defense, in ordinary and concise language.

Counter claims and cross demands.

SEC. 47. The counter-claim mentioned in the last section, shall be one existing in favor of the defendant, and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action: *First*, A cause of action arising out of the transaction set forth in the complaint or answer, as the foundation of the plaintiffs' claim, or defendants' defense, connected with the subject of the action: *Second*, In an action arising upon contract, any other cause of action arising also upon contract, and existing at the commencement of the action-tion.

When equal

SEC. 48. When cross-demands have existed between persons under such circumstances, that if one had brought an action against the other a counter-claim could have been set up, neither shall be deprived of the benefit thereof by the assignment or death of the other, but the two demands shall be deemed compensated, so far as they equal each other.

Several defenses may be set up.

SEC. 49. The defendant may set forth by answer as many defenses and counter-claims as he may have. They shall each be separately stated, and the several defenses shall refer to the causes of action which they are intended to answer, in a manner by which they may be intelligibly distinguished.

Demurrer to answer, sham pleadings.

SEC. 50. When the answer contains new matter, the plaintiff may, within the number of days in which the defendant is, by the summons, required to answer, said days to be computed from the time of the service on the plaintiff of a copy of such answer, demur to the same for insufficiency, stating in his demurrer the grounds thereof, and he may, also, within the same time demur to one or more defenses, set up in the answer. Sham and irrelevant answers, and defenses, and so much of any answer as may be irrelevant, redundant or immaterial may be stricken out on motion, and upon such terms as the court in its discretion may impose.

To be subscribed and verified.

SEC. 51. Every pleading shall be subscribed by the party, or his attorney, and when the complaint is verified by affidavit, the answer shall be verified also, except as provided in the next section.

Verification, when omited.

SEC. 52. The verification of the answer required in the last section, may be omitted when an admission of the truth of the complaint might subject the party to prosecution for felony or misdemeanor.

SEC. 53. When an action is brought upon a written instrument, and the complaint contains a copy of such instrument, or a copy is annexed thereto, the genuineness and due execution of such instrument shall be deemed admitted, unless the answer denying the same be verified.

Manner of verifying pleadings.

SEC. 54. When the defense to an action is founded upon a written instrument and a copy thereof is contained in the answer, or is annexed thereto, the genuineness and due execution of such instrument shall be deemed admitted, unless the plaintiff file with the clerk five days before the commencement of the term at which the action is to be tried, an affidavit denying the same: *Provided*, That the due execution of the instrument shall not be deemed to be admitted by a failure to controvert the same on oath; as prescribed in this and the last preceding section, unless the party controverting the same is, upon demanding, permitted to inspect the original before filing such answer.

Manner of verifying pleadings.

SEC. 55. In all cases of the verification of a pleading, the affidavit of the party shall state the same is true of his own knowledge, except as to the matters, which are therein stated on his information or belief, and as to those matters, that he believes it to be true, and where a pleading is verified, it shall be by the affidavit of the party, unless he be absent from the county where the attorney resides, or from some cause unable to verify it, or the facts are within the knowledge of his attorney or other person verifying the same. When the pleading is verified by the attorney, or any other person except the party, he shall set forth in the affidavit the reason why it is not made by the party. When a corporation is a party, the verification may be made by an officer or agent thereof; or when the Territory, or any officer thereof in its behalf, is a party, the verification may be made by any person acquainted with the facts, except that in actions prosecuted in behalf of the Territory, or the people, the pleadings need not, in any case, be verified.

Items of account where requiaed.

SEC. 56. It shall not be necessary for a party to tes forth in a pleading the items of an account therein alleged, but he shall deliver to the adverse party, within five days after a demand thereof, in writing, a copy of the account, or be precluded from giving evidence thereof. The court or a judge thereof, or a probate judge may order a further account, when the one delivered is too general or is defective in any particular.

Irrelevant matter.

SEC. 57. If irrelevant or redundant matter be inserted in a pleading, it may be stricken out by the court, on motion of any person aggrieved thereby.

Description of property SEC. 58. In an action for the recovery of real property, such property shall be described, with its metes and bounds, in the complaint, or the property shall be so described by its commonly known description or designation, as that the sheriff, or other officer, could with certainty execute a writ of assistance or possession.

Judgment or other determination of courts. SEC. 59. In pleading a judgment or other determination of a court or officer of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish on the trial, the facts conferring jurisdiction.

Conditions precedent. SEC. 60. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance; but it may be stated generally, that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading shall establish on the trial the facts showing such performance.

Private statutes SEC. 61. In pleading a private statute or a right denied therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

Libel or slander. SEC. 62. In an action for libel or slander, it shall not be necessary to state in the complaint any intrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it shall be sufficient to state generally, that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff shall establish on the trial that it was so published or spoken.

Truth may be alleged. SEC. 63. In the actions mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances, to reduce the amount of damages; and, whether he prove the justification or not, he may give in evidence the mitigating circumstances.

Several causes of action. SEC. 64. The plaintiff may unite several causes of action in the same complaint, when they all arise out of: *First*, Contracts express or implied; or, *Second*, Claims to recover specific real property, with or without damages for the withholding thereof, or for waste committed thereon, and the rents and profits of the same; or, *Third*, Claims to recover specific personal property, with or without damages for the withholding thereof; or, *Fourth*, Claims against a trustee by virtue of a contract, or by operation of law; or, *Fifth*. Injuries to character; or, *Sixth*, Injuries to person; or, *Seventh*, Injuries to property. But the causes of action so united shall all belong to only one of these classes, and shall affect all the parties to the action, and not require different places of trial, and shall be separately stated: *Provided, however*, That an action for malicious arrest and prosecution or either of them, may be united with an action for either an injury to character or to person.

Allegations when taken as true.

SEC. 65. Every material allegation of the complaint not specially controverted by the answer, shall for the purpose of the action, be taken as true. The allegation of new matter in the answer shall on the trial be deemed controverted by the adverse party.

Material allegations.

SEC. 66. A material allegation in a pleading is one essential to the claim, or defense, and which could not be stricken from the pleading without leaving it insufficient.

Answer after demurrer

SEC. 67. After demurrer, and before the trial of the issue of law thereon, the pleadings demurred to may be amended as of course and without costs, by filing the same as amended and serving a copy thereof on the adverse party or his attorney within ten days, who shall have ten days thereafter in which to demur or answer thereto; but a party shall not so amend more than once. A demurrer shall not be deemed waived by the filing of an answer at the same time of filing the demurrer; and when the demurrer to a complaint is overruled, and there is no answer filed, the court may upon terms, allow an answer to be filed. If a demurrer to the answer be overruled, the facts alleged in the answer shall be considered as denied to the extent mentioned in section sixty-five. When circumstances occurring subsequently to the commencement of the action render it proper, the same may be presented by supplemental pleadings, and issue taken thereon in the same manner as in the case of original pleadings.

Amendment of pleadings and time for answering.

SEC. 68. The court may in furtherance of justice, and on such terms as may be proper, amend any pleadings or proceedings, by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, and may, upon like terms, enlarge the time for an answer or demurrer, or demurrer to an answer filed. The court may likewise, upon affidavit showing good cause therefor, after notice to the adverse party, allow upon such terms as may be just, an amendment to any pleading or proceeding in other particulars, and may, upon like terms allow an answer to be made after the time limited by this act; and may upon such terms as may be just, and upon payment of costs, relieve a party or his legal representatives from a judgment, order or other proceeding taken against him through his mistake, inadvertance, surprise, or excusable neglect, and when for any cause satisfactory to the court or judge at chambers, the party aggrieved has been unable to apply for the relief sought during the term at which such judgment, order or proceeding complained of was taken, the court or the judge at chambers in vacation may grant the relief upon application made within a reasonable time, not exceeding five months after the adjournment of the term. When from any cause, the summons and a copy of the complaint in an action have not been personally served on the defendant, the court may allow on such terms as may be just, such defendant or his legal representatives, at any time within six months after the rendition of any judgment in such action, to answer to the merits of the original action.

Plaintiff ignorant of defendants name.

SEC. 69. When the plaintiff is ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name; and when his true name is discovered, the pleading or proceeding may be amended accordingly.

Construction of pleadings.

SEC. 70. In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed, with a view to substantial justice between the parties.

Error, when to be disregarded.

SEC. 71. The court shall in every stage of an action, disregard any error or defect in the pleadings or proceedings which shall not affect the substantial rights of the parties, and no judgment shall be reversed or affected by reason of such error or defect.

CHAPTER FIVE.

Of the provisional remedies in civil actions--Arrests and Bail.

SECTION 72. Arrest when may be made.
74. Order from whom obtained.
75. When order may be made from.
76. Undertaking required.
77. Order, duty of Sheriff and how executed.
80. Defendant, how discharged.
81. Bail, how given.
82. Surrender in discharge of bail.
83. May arrest defendant.

84. Action against.
85. How exonerated.
86. Proceedings after arrest.
87. Notice of justification of bail.
88. Bail, how to justify.
89. Examination of bail.
90. Allowance of bail.
91. Deposit in lieu of bail.
92. Disposition of deposit.
93. Bail after deposit.
94. Application of deposit after judgment.
95. Liability of Sheriff.
96. Judgment against Sheriff.
97. Vacating order of arrest.
98. Reduction of bail.

Arrest when may be made.

SEC. 72. No person shall be arrested in a civil action, except as prescribed by this act.

SEC. 73. The defendant may be arrested as hereinafter provided, in the following cases:

First—In an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the Territory with intent to defraud his creditors, or when the action is for wilful injury to person, to character or to property, knowing the property to belong to another. *Second*—In an action for a fine or penalty, or on a promise to marry, or for money or property embezzled, or fraudlently applied, or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent or clerk, in the course of his employment as such; or by any other person in a fiduciary capacity, or for misconduct or neglect in office, or in a professional employment, or for a wilful violation of duty. *Third*, in an action to recover the possession of personal property unjustly detained, when the property or any part thereof, has been concealed, removed or disposed of to prevent its being found or taken by the sheriff. *Fourth*—When the defendant has been guilty of fraud in contracting the debt or incurring the obligation for which the action is brought, or in concealing or disposing of the property, for the taking, detention or conversion of which the action is brought. *Fifth*—When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

Order, from whom obtained.

SEC. 74. An order for the arrest of the defendant shall be obtained from a judge of the court in which the action is brought.

When order may be made

SEC. 75. The order may be made whenever it appears to the judge, by the affidavit of the plaintiff, or some other person, that a sufficient cause of action exists, and that the case is one of those mentioned in section seventy-three. The affidavit shall be either positive or upon information and belief; and when upon information and belief, it shall state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavit shall be filed with the clerk of the court in which such suit is pending.

Undertaking required.

SEC. 76. Before making an order, the judge must require a written undertaking on the part of the plaintiff, with sureties in an amount to be fixed by the judge, which must be at least five hundred dollars, to the effect that the plaintiff will pay all costs which may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the same be wrongful or without sufficient cause, not exceeding the sum specified in the undertaking. The undertaking must be filed with the clerk of the court.

Order, duty of sheriff and how executed.

SEC. 77. The order may be made to accompany the summons, or any time afterward before judgment. It shall require the sheriff of the county where the defendant may be found, forthwith to arrest him and hold him to bail in a specified sum, and to return the order at a time therein mentioned, to the clerk of the court in which the action is pending.

SEC. 78. The order of arrest, with a copy of the affidavit upon which it is made, shall be delivered to the sheriff, who, upon arresting the defendant, shall deliver to him a copy of the affidavit, and also, if desired, a copy of the order of arrest.

SEC. 79. The sheriff shall execute the order by arresting the defendant, and keeping him in custody until discharged by law.

Defendant how discharged.

SEC. 80. The defendant at any time before execution, shall be discharged from the arrest, either upon giving bail, or upon depositing the amount mentioned in the order of arrest.

Bail how given.

SEC. 81. The defendant may give bail, by causing a written undertaking to be executed by two or more sufficient sureties, to the effect that they are bound in the amount mentioned in the order of arrest, that the defendant will at all times render himself amenable to the process of the court, during the pendency of the action, and to such as may be issued to enforce the judgment therein; or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

Surrender in discharge of bail.

SEC. 82. At any time before judgment, or within ten days thereafter, the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested.

May arrest defendant.

SEC. 83. For the purpose of surrendering the defendant, the bail at any time or place before they are finally charged, may themselves arrest him, or by a written authority, indorsed on a certified copy of the undertaking, may empower the sheriff to do so. Upon the arrest of the defendant by the sheriff or upon defendants delivery to the sheriff by the bail, or upon defendants own surrender, the bail shall be exonerated; *Provided*, such arrest, delivery or surrender, take place before the expiration of ten days after judgment; but if such arrest, delivery, or surrender, be not made within ten days after judgment, the bail shall be finally charged on the undertaking, and bound to pay the amount of judgment within ten days thereafter.

Action against.

SEC. 84. If the bail neglect to or refuse to pay the judgment within ten days after they are finally charged, an action may be commenced against such bail for the amount of such original judgment.

How exonerated.

SEC. 85. The bail shall be exonerated by the death of the defendant, or his imprisonment in a Territorial prison; or by his legal discharge from the obligation to render himself amenable to the process.

Proceedings after arrest.

SEC. 86. Within the time limited for the purpose, the sheriff must file the order of arrest in the office of the clerk of the court in which the action is pending, with his return indorsed thereon; together with a copy of the undertaking of the bail. The original undertaking he shall retain in his possession until, as herein provided. The plaintiff, within ten days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he shall be deemed to have accepted them, and the sheriff shall be exonerated from his liability. If no notice be served within ten days, the original undertaking shall be filed with the clerk of the court.

Notice of justification of bail.

SEC. 87. Within five days after the receipt of notice the sheriff or defendant may give to the plaintiff, or his attorney, notice of the justification of the same, or other bail, (specifying the place of residence and occupation of the latter) before a judge of the court, or probate judge, at a specified time and place; the time to be not less than five nor more than ten days thereafter, except by consent of parties. In case other bail be given, there shall be a new undertaking.

Bail how to justify.

SEC. 88. The qualifications of bail are as follows: *First*—Each of them must be a resident and householder, or free holder, within the Territory; *Second*—Each must be worth the amount specified in the order of arrest, or the amount to which the order is reduced, as provided in this chapter, over and above all his debts and liabilities, exclusive of property exempt from execution; but the judge on justification may allow more than two sureties to justify severally, in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

Examination of bail. SEC. 89. For the purpose of justification, each of the bail must attend before the judge, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency in such manner as the judge in his discretion, may think proper. The examination must be reduced to writing, and subscribed by the bail, if required by the plaintiff.

Allowance of bail. SEC. 90. If the judge find the bail sufficient he must annex the examination to the undertaking, indorse his allowance thereon, and cause the same to be filed, and the sheriff must thereupon be exonerated from liability.

Deposit in lieu of bail. SEC. 91. The defendant may, at the time of his arrest, instead of giving bail deposit with the sheriff the amount mentioned in the order. In case the amount of the bail be reduced, as provided in this act, the defendant may deposit such amount instead of giving bail. In either case, the sheriff shall give the defendant a certificate of the deposit made, and the defendant shall be discharged out of custody.

Disposition of deposit. SEC. 92. The sheriff shall immediately after the deposit, pay the same into court, and take from the clerk receiving the same two certificates of such payment, one of which he shall deliver or transmit to the plaintiff, or his attorney and the other to the defendant. For any default in making such payment the same proceedings may be had on the official bond of the sheriff to collect the sum deposited, as in other cases of delinquency.

Bail after deposit, SEC. 93. If money be deposited, as provided in the last two sections, bail may be given, and may justify upon notice, at any time before judgment; and on the filing of the undertaking and justification with the clerk, the money deposited shall be refunded to the defendant.

Application of deposit after judgment. SEC. 94. Where money shall have been deposited, if it remain on deposit at the time of the recovery of a judgment in favor of the plaintiff, the clerk shall, under the direction of the court apply the same in satisfaction thereof, and after satisfying the judgment, shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall, under like direction of the court, refund to him the whole sum deposited and remaining unapplied.

Liability of sheriff.

SEC. 95. If after being arrested, the defendant escape or be rescued, the sheriff shall himself be liable as bail; but he may discharge himself from such liability by the giving and justification of bail, at any time before judgment.

Judgment against Sheriff.

SEC. 96. If a judgment be recovered against the sheriff, upon his liability as bail, and an execution thereon be returned unsatisfied, in whole or in part, the same proceedings may be had on his official bond, for the recovery of the whole or any deficiency, as in other cases of delinquency.

Vacating order of arrest,

SEC. 97. A defendant arrested may at any time before the justification of bail apply to the judge who made the order, or the court in which the action is pending, upon reasonable notice to the plaintiff, to vacate the order of arrest, or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs, in addition to those on which the order of arrest was made.

Reduction of bail.

SEC. 98. If upon such application, it appears that there was not sufficient cause for arrest, the order shall be vacated; or if it satisfactorily appear that the bail was fixed too high, the amount shall be reduced.

CHAPTER VI.

Claim and delivery of personal Property.

SECTION 99. When claim may be made.
100. Affidavit to obtain order for delivery.
101. Proceedings on.
103. Sureties, excepting to.
104. Defendant may require return.
105. Justification of defendants sureties.
106. Qualification of sureties.
107. Property concealed.
108. Sheriff to keep property.
109. Property claimed by third party.
110. Notice, affidavit and undertaking to be filed.

When claim may be made.

SEC. 99. The plaintiff in an action to recover the possession of personal property may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him, as provided in this act.

Affidavit to obtain order for delivery.

SEC. 100. Where a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing: *First.* That the plaintiff is the owner of the property claimed, (particularly describing it) or is entitled to the possession thereof; *Second.* That the property is wrongfully detained by the defendant; *Third.* The alleged cause for the detention thereof, according to his best knowledge, information, and belief; *Fourth.* That the same has not been taken for a tax, assessment, or fine, pursuant to a statute; or seized under an execution, or an attachment against the property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure; *Fifth.* The actual value of the property.

Proceedings on.

SEC. 101. The plaintiff or his attorney may thereupon, by an indorsement in writing upon the affidavit, require the sheriff of the county where the property claimed may be to take the same from the defendant.

SEC. 102. Upon a receipt of the affidavit and notice with a written undertaking executed by two or more sufficient sureties, approved by the sheriff, to the effect that they are bound to the defendant in double the value of the property, as stated in the affidavit for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum of money as may, from any cause be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, notice and undertaking, by delivering the same to him personally, if he can be found, or to his agent, from whose possession the property is taken; or if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion; or if neither have any known place of abode, by putting them in the nearest post office, directed to the defendant.

Sureties excepting to.

SEC. 103. The defendant may, within two days after service of a copy of the affidavit and undertaking, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fails to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify, on notice in like manner as upon bail on arrest; and the sheriff shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they justify. If the defendant except to the sureties, he cannot reclaim the property as provided in the next section.

Defendant may require return.

SEC. 104. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within five days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section one hundred and nine.

Justification of defendant's sureties.

SEC. 105. The defendant's sureties, upon notice to the plaintiff of not less than two nor more than five days, shall justify before the judge in the same manner as upon bail on arrest; and upon such justification the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until the justification is completed or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

Qualification of sureties.

SEC. 106. The qualification of sureties and their justification shall be such as are prescribed by this act in respect to bail upon an order of arrest.

Property concealed.

SEC. 107. If the property, or any part thereof, be concealed in a building or inclosure, the sheriff shall publicly demand its delivery; if it be not delivered, he shall cause the building or inclosure to be broken open, and take the property into his possession; and, if necessary, he may call to his aid the power of the county.

Sheriff to keep property.

SEC. 108. When the sheriff shall have taken property, as in this chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto upon receiving his lawful fees for taking and his necessary expenses for keeping the same.

Property claimed by third party.

SEC. 109. If the property taken be claimed by any other person than the defendant, or his agent, and such person make affidavit of his title thereto, or right of possession thereof, stating the grounds of such title, or right, and serve the same upon the sheriff, the sheriff shall not be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the sheriff against such claim by an undertaking by two sufficient sureties; and no claim to such property by any other person than the defendant, or his agent, is valid against the sheriff unless so made.

Notice, affidavit and undertaking to be filed.

SEC. 110. The sheriff shall file the notice, undertaking and affidavit, with his proceedings thereon, with the clerk of the court in which the action is pending within twenty days after taking the property mentioned therein.

CHAPTER VII.

Injunctions.

SECTION 111. Injunctions defined.
112. In what cases may be, and when granted.
114. After answer.
115. Undertaking on.
116. Order to show cause.
117. Injunction to suspend business of corporation.
118. Motion to dissolve or modify.
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Injunctions defined.

SEC. 111. An injunction is a writ or order requiring a person to refrain from a particular act. It may be granted by the court in which the action is brought, or by the judge thereof, and when made by a judge may be enforced as the order of the court.

In what cases may be, and when granted.

SEC. 112. An injunction may be granted in the following cases: *First.* When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually. *Second.* When it shall appear by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, great or irreparable injury to the plaintiff. *Third.* When it shall appear during the litigation that the defendant is doing, or threatens, or is about to do, or is procuring, or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action and tending to render the judgment ineffectual.

SEC. 113. The injunction may be granted at the time of issuing the summons upon the complaint, and at any time afterwards before judgment upon affidavits. The complaint in the one case, and the affidavits in the other, shall show satisfactorily that sufficient grounds exist therefor. No injunction shall be granted on the complaint unless it is verified. When granted on the complaint, a copy of the complaint, and verification attached, shall be served with the injunction; when granted upon affidavit, a copy of the affidavit shall be served with the injunction.

After answer.

SEC. 114. An injunction cannot be allowed after the defendant has answered, unless upon notice, or upon an order to show cause; but, in such case, the defendant may be restrained until the decision of the court or judge granting or refusing the injunction.

Undertaking on.

SEC. 115. On granting an injunction the court or judge shall require, except where the people of the Territory are a party plaintiff, a written undertaking on the part of the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the court finally decide that the plaintiff was not entitled thereto.

Order to show cause.

SEC. 116. If the court or judge deem it proper that the defendant, or any of several defendants, shall be heard before granting the injunction, an order may be made requiring cause to be shown at a specified time and place why the injunction should not be granted; and the defendant may, in the meantime, be restrained.

Injunction to suspend business of corporation

SEC. 117. An injunction to suspend the general and ordinary business of a corporation shall not be granted except by the court or the judge thereof; nor shall it be granted without due notice of the application therefor to the proper officers, or agents, or managers of the corporation, except when the people of this Territory are a party to the proceedings.

Motion to dissolve or modify.

SEC. 118. If an injunction be granted without notice, the defendant, at any time before the trial, may apply, upon reasonable notice, to the judge who granted the injunction, or to the court in which the action is brought, to dissolve or modify the same. The application may be made upon the complaint and the affidavit on which the injunction was granted, or upon affidavit on the part of the defendant, with or without the answer. If the application be made upon affidavit on the part of defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the injunction was granted.

Dissolution or modification.

SEC. 119. If, upon such application, it satisfactorily appears that there is not sufficient ground for the injunction, it shall be dissolved; or if it appear that the extent of the injunction is too great, it shall be modified.

CHAPTER VIII.

Attachments.

SECTION 120. Time and ground for attachment.
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Time and ground for attachment.

SEC. 120. The plaintiff, at the time of issuing the summons, or at any time afterward, may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, in the following cases: *First.* In an action upon a contract, express or implied, for the direct payment of money, which contract is not secured by a mortgage, lien or pledge upon real or personal property; or if so secured, that such security has, without any act of the plaintiff or the person to whom the security was given, become valueless. *Second.* In an action upon a contract, express or implied, against a defendant not residing in this Territory.

Affidavit what to show.

SEC. 121. The clerk of the court shall issue the writ of attachment upon receiving an affidavit by or on behalf of the plaintiff, which shall be filed, setting forth—*First.* That the defendant is indebted to the plaintiff, specifying the amount of such indebtedness over and above all legal set-offs and counter claims, upon a contract, express or implied, for the direct payment of money, and that the payment of the same has not been secured by any mortgage, lien or pledge upon real or personal property; or, if so secured, that such security has, without any act of the plaintiff or the person to whom the security was given, become valueless; or, *second*, that the defendant is indebted to the plaintiff (specifying the amount of the indebtedness, as near as may be, over and above all legal set-offs and counter claims), and that the defendant is a non-resident of the Territory; and, *third*, that the attachment is not sought, and the action is not prosecuted to hinder, delay or defraud any creditor or creditors of the defendant.

Undertaking of plaintiff.

SEC. 122. Before issuing the writ the clerk must require a written undertaking on the part of the plaintiff, in a sum not less than two hundred dollars, and not exceeding the amount claimed by the plaintiff, with sufficient sureties, to the effect that if the defendant recover judgment the plaintiff will pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking, if the attachment be wrongfully issued.

Writ, requirement of; several may issue.

SEC. 123. The writ shall be directed to the sheriff of any county in which property of such defendant may be, and require him to attach and safely keep all the property of such defendant within his county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, unless the defendant give him security by the undertaking of at least two sufficient sureties in an amount sufficient to satisfy such demand besides costs, or in an amount equal to the value of the property which has been or is about to be attached; in which case, to take such undertaking, several writs may be issued at the same time to the sheriffs of different counties; and the plaintiff shall be entitled to other writs of attachment as often as he may require at any time before judgment.

What property may be attached.

SEC. 124. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits thereon, and all debts due such defendant, and all other property in this Territory of such defendant not exempt from execution, may be attached, and, if judgment be recovered, be sold to satisfy the judgment and execution.

How writ shall be executed.

SEC. 125. The sheriff to whom the writ is directed and delivered shall execute the same without delay, and if the undertaking mentioned in section one hundred and twenty-three be not given, as follows: *First.* Real property, standing upon the records of the county in the name of the defendant, must be attached by filing with the Recorder of the county a copy of the writ, together with a description of the property attached, and a notice that it is attached, and by leaving a similar copy of the writ, description and notice with an occupant of the property, if there is one; if not, then by posting the same in a conspicuous place on the property attached. Real property, or an interest therein, belonging to the defendant and held by any other person, or standing on the records of the county in the name of any other person, must be attached by filing with the Recorder of the county a copy of the writ, together with a description of the property and a notice that such real property, and any interest of the defendant therein, held by or standing in the name of such other person (naming him), are attached; and by leaving with the occupant, if any, and with such other person, or his agent, if known and within the county, or at the residence of either, if within the county, a copy of the writ, with a similar description and notice. If there is no occupant of the property, a copy of the writ, together with such description and notice, must be posted in a conspicuous place upon the property. The Recorder must index such attachment when filed in the names both of the defendant and of the person by whom the property is held or in whose name it stands on the records. *Second.* Personal property, capable of manual delivery, shall be attached by taking it into custody. *Third.* Stock or shares, or interest in stock or shares, of any corporation or company shall be attached by leaving with the president, or other head of the same, or the secretary, cashier or managing agent thereof, a copy of the writ and a notice stating that the stock or interest of the defendant is attached in pursuance of such writ. *Fourth.* Debts and credits and other personal property not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession or under his control such credits, or other personal property, or with his agent, a copy of the writ and a notice that the debts owing by him to the defendant, or the credits or other personal property in his possession or under his control belonging to the defendant, are attached in pursuance of such writ.

Property in the hands of third party, how attached.

SEC. 126. Upon receiving information in writing from the plaintiff, or his attorney, that any person has in his possession or under his control any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the sheriff shall serve upon such person a copy of the writ and a notice that such credits or other property or debts, as the case may be, are attached in pursuance of such writ.

Liability of third party.

SEC. 127. All persons having in their possession or under their control any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice, as provided in the last two sections, shall be (unless such property be delivered up or transferred, or such debts be paid to the sheriff) liable to the plaintiff for the amount of such credits, property or debts until the attachment be discharged or any judgment recovered by him be satisfied.

Examination of third party.

SEC. 128. Any person owing debts to the defendant, or having in his possession or under his control, any credits or other personal property belonging to the defendant, may be required to attend before the court or judge, or a referee appointed by the court or judge, and be examined on oath respecting the same. The defendant may also be required to attend, for the purpose of giving information respecting his property, and may be examined on oath. The court or judge may, after such examination, order personal property, capable of manual delivery, to be delivered to the sheriff, on such terms as may be just—having reference to any liens thereon or claims against the same—and a memorandum to be given of all personal property, containing the amount and description thereof.

Return of sheriff.

SEC. 129. The sheriff shall make a full inventory of the property attached and return the same with the writ. To enable him to make such return, as to the debts and credits attached, he shall request, at the time of service, the party owing the debts or having the credit, to give him a memorandum, stating the amount and description of each; and if such memorandum be refused, he shall return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceedings taken for the purpose of obtaining information respecting the amount and description of such debt or credit.

Perishable property to be sold.

SEC. 130. If any of the property attached be perishable, the sheriff shall sell the same, in the manner in which such property is sold on execution. The proceeds and other property attached by him, shall be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment, recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The sheriff's receipt shall be a sufficient discharge for the amount paid; *Second.* Whenever property has been taken by an officer under a writ of attachment, and it is made to appear satisfactorily to the court, or a judge thereof, or the probate judge, that the interest of the parties to the action, will be subserved by a sale thereof, the court or judge may order such property to be sold in the same manner as property is sold under an execution, and the proceeds to be deposited in the court to abide the judgment in the action. Such order can be made only upon notice to the adverse party or his attorney, in case such party has been personally served with a summons in the action.

Property claimed by third party.

SEC. 131. If any personal property attached be claimed by a third person as his property, the sheriff may summon a jury of six men to try the validity of such claim; and such proceedings shall be had thereon, with the like effect, as in case of claim after levy upon execution.

Judgment how satisfied and notice of sale.

SEC. 132. If the judgment be recovered by the plaintiff, the sheriff shall satisfy the same out of the property attached by him, which has not been delivered to the defendant, or a claimant as hereinbefore provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose: *First.* By paying to the plaintiff the proceeds of all sales of perishable property sold by him or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment; *Second,* If any balance remain due and an execution shall have been issued on the judgment, he shall sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notices of the sales shall be given, and the sales conducted as in other cases of sales on execution.

Proceedings when execution returned unsatisfied.

SEC. 133. If after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the sheriff shall proceed to collect such balance, as upon an execution in other cases. Whenever the judgment shall have been paid, the sheriff upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

Proceedings when defendant recovers judgment.

SEC. 134. If the execution be returned unsatisfied, in whole or in part, the plaintiff may prosecute any undertaking given, pursuant to sections one hundred and twenty-three and one hundred and thirty-seven, or he may proceed as in other cases upon the return of an execution.

Discharge of attachment, when made, and the delivery of property.

SEC. 135. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales, and money collected by the sheriff, and all the property attached remaining in the sheriff's hands, shall be delivered to the defendant or his agent, the order of attachment shall be discharged and the property released therefrom.

Application for discharge of attachment, when made.

SEC. 136. Whenever the defendant shall have appeared in the action he may, upon reasonable notice to the plaintiff, apply to the court in which the action is pending, or to the judge thereof, or to a probate judge, for an order to discharge the attachment, in whole or in part; and upon the execution of the undertaking mentioned in the next section, an order may be made releasing from the operation of the attachment any or all of the property attached, and all of the property so released, and all of the proceeds of the sales thereof, must be delivered to the defendant, upon the justification of the sureties on the undertaking, if required by the plaintiff.

Undertaking to release attachment.

SEC. 137. Before the granting of such order the court, or judge, shall require an undertaking, on behalf of the defendant, by at least two sureties, residents and freeholders, or householders, in the county, to the effect that, in case plaintiff recover judgment in the action, defendant will, on demand, redeliver such attached property so released to the proper officer to be applied to the payment of the judgment, or, in default thereof, defendant and sureties will, on demand, pay to the plaintiff the full value of the property released. The court or judge granting such release may fix the sum for which the undertading shall be executed, and, if necessary in fixing such sum to know the value of the property released, the same may be appraised by three disinterested persons, to be appointed for that purpose. The sureties may be required to justify before the court or judge, and the property attached shall not be released from the attachment without their justification, if the same be required.

Motion to discharge for irregularity.

SEC. 138. The defendant may also, at any time before the time for answering expires, apply on motion, upon reasonable notice to the plaintiff, to the court in which the action is brought, or to the judge thereof, or to a probate judge, that the writ of attachment be discharged on the ground that the same was improperly or irregularly issued.

Motion upon affidavits

SEC. 139. If the motion be made upon affidavit on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence in addition to those on which the attachment was made.

When discharged.

SEC. 140. If, upon such application, it satisfactorily appears that the writ of attachment was improperly or irregularly issued, it must be discharged.

SEC. 141. The sheriff shall return the writ of attachment with the summons, if issued at the same time; otherwise, within twenty days after its receipt, with a certificate of his proceedings endorsed thereon or attached thereto.

CHAPTER IX.

Receivers.

SECTION 142. Appointment of receiver.
143. Receivers to take charge of property when corporation dissolved.
144. Who may be appointed to receive, and their undertakings.
145. Oath and undertaking by receivers.
146. Receivers, duties and powers of.
147. Funds invested by consent.

Appointment of receiver.

SEC. 142. A receiver may be appointed by the court in which an action is pending or judgment is entered, or by a judge thereof, in the following cases: *First.* In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured. *Second.* In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt. *Third.* After judgment, to carry the judgment into effect. *Fourth.* After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of on appeal, or in proceedings in aid of execution when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment. *Fifth.* In cases where a corporation has been dissolved, or is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights. *Sixth.* In all other cases where the appointment of a receiver is sanctioned by the practice and usages of courts of equity.

Receivers to take charge of property when corporation dissolved.

SEC. 143 Upon the dissolution of any corporation the District Court of the county in which the corporation carries on its business, or has its principal place of business, on application of any creditor of the corporation, or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over among the stockholders or members.

Who may be appointed receivers, and their undertaking.

SEC. 144. No party, or attorney, or person interested in an action, can be appointed receiver therein without the written consent of the parties filed with the clerk. If a receiver be appointed upon an *ex parte* application, the court, before making the order, may require from the applicant an undertaking, with sufficient sureties, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages he may sustain by reason of the appointment of such receiver and the entry by him upon his duties, in case the applicant shall have procured such appointment wrongfully, maliciously or without sufficient cause; and the court may, in its discretion, at any time after said appointment, require an additional undertaking.

Oath and undertaking of receiver.

SEC. 145. Before entering upon his duties the receiver must be sworn to perform them faithfully, and, with one or more sureties approved by the court or judge, execute an undertaking to such person, and in such sum as the court or judge may direct, to the effect that he will faithfully discharge the duties of receiver in the action and obey the orders of the court therein.

Receivers, duties and powers of.

SEC. 146. The receiver has, under the control of the court, power to bring and defend actions in his own name as receiver, to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, make transfers, and generally to do such acts respecting the property as the court may authorize.

SEC. 147. Funds in the hands of a receiver may be invested upon interest by order of the court, but no such order can be made except upon consent of one of the parties to the action. **Funds invested by consent.**

CHAPTER X.

Deposit in Court.

SECTION 148. When court may order deposit.
149. When order of court disobeyed.

SEC. 148. When it is admitted by the pleading, or shown by the party, that he has in possession or under his control any money or other thing capable of delivery, which, being the subject of litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same, upon motion, to be deposited in court or delivered to such party, upon such conditions as may be just, subject to the further direction of the court. **When court may order deposit.**

SEC. 149. Whenever in the exercise of its authority a court has ordered the deposit or delivery of money or other thing, and the order is disobeyed, the court, besides punishing the disobedience, may make an order requiring the sheriff to take the money or thing and deposit or deliver it in conformity with the direction of the court. **When order of court disobeyed.**

CHAPTER XI.

Trial and Judgment.

SECTION 150. Judgment.
151. How given, effect of.
152. Against one of several defendants.
153. Extent of relief.
154. Dismissal of action, or non-suit.
155. Judgment on merits.
156. Judgment upon failure to answer.

SEC. 150. A judgment is the final determination of the rights of the parties in the action or proceeding. **Judgment.**

SEC. 151. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the **How given, effect of.**

justice of the case requires it, determine the ultimate rights of the parties on each side as between themselves.

Against one of several defendants. SEC. 152. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper.

Extent of relief. SEC. 153. The relief granted to the plaintiff, if there be no answer, shall not exceed that which he shall have demanded in his complaint; but in any other case the court may grant him any relief consistent with the case made by the complaint and embraced within the issue.

Dismissal of action or non-suit. SEC. 154. An action may be dismissed or judgment of nonsuit entered in the following cases: *First.* By the plaintiff himself, at any time before trial, upon the payment of costs, if a counter claim has not been made. If a provisional remedy has been allowed, the undertaking shall thereupon be delivered by the clerk to the defendant, who may have his action thereon. *Second.* By either party upon the written consent of the other. *Third.* By the court, when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal. *Fourth.* By the court, when, upon the trial, and before the final submission of the case, the plaintiff abandons it. *Fifth.* By the court, upon motion of the defendant, when, upon the trial, the plaintiff fails to prove a sufficient case for the jury. The dismissal in the first two subdivisions shall be made by an entry in the clerk's register. Judgment may thereupon be entered accordingly.

Judgment on merits. SEC. 155. In every case other than those mentioned in the last section the judgment shall be rendered on the merits.

JUDGMENT UPON FAILURE TO ANSWER.

Judgment upon failure to answer. SEC. 156. Judgment may be had, if the defendant fail to answer, as follows: *First.* In an action arising upon contract for the recovery of money or damages only, if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted, the clerk, upon application of the plaintiff, shall enter the default of the defendant, and immediately thereafter enter judgment for the amount specified in the summons, including the costs, against the defendant, or against one or more of several defendants, in the cases provided for in section thirty-two. *Second.* In other actions, if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted, the clerk shall enter the default of the defendant, and thereafter the plaintiff may apply, at the first or any subsequent term of the court for the relief demanded in the complaint. If the taking of an account, or the proof of any fact, be necessary to enable the court to give judgment or to carry the judgment into effect, the court may take the account, or hear the proof, or may, in its discretion, order a reference for that purpose. And when the action is for the recovery of damages, in whole or in part, the court may order the damages to be assessed by a jury; or if, to determine the amount of damages, the examination of a long account be necessary, by a reference, as above provided. *Third.* In actions where the service of the summons was by publication, the plaintiff, upon the expiration of the time designated in the order of publication, may, upon proof of the publication and that no answer has been filed, apply for judgment; and the court shall thereupon require proof to be made of the demand mentioned in the complaint, and if the defendant be not a resident of the Territory, shall require the plaintiff, or his agent, to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover.

CHAPTER XII.

Of Issues and the Manner of their Disposition.

SECTION 157. When an issue arises.
158. Of law on demurrer.
159. Of fact upon answer.
160. Of law, how tried.
161. Of fact, how tried.
162. Entry of causes on calendar.
163. Either party may bring issue to trial.
164. Postponement of trial.
165. Deposition of witness may be taken.

SEC. 157. An issue arises when a fact or conclusion of law is maintained by the one party and controverted by the other. Issues are of two kinds—*First*, of law; *second*, of fact. **When an issue arises.**

SEC. 158. An issue of law arises upon a demurrer to the complaint or answer, or to some part thereof. **Of law on demurrer.**

Of fact upon answer. Sec. 159. An issue of fact arises—*First*, upon a material allegation in the complaint controverted by the answer; *second*, upon new matter in the answer, except an issue of law is joined therein.

Of law, how tried. Sec. 160. An issue of law shall be tried by the court, unless it be referred, upon consent.

Of fact, how tried. Sec. 161. An issue of fact arising in cases at law must be tried by a jury, unless a jury trial be expressly waived or a reference ordered, as provided in this code. Where in these cases there are issues both of law and fact, the issues of law must be first disposed of. In other cases issues of fact must be tried by the court, subject to its power to order any such issues to be tried by a jury, or to be referred to a referee, as provided in this code.

Entry of causes on calendar. Sec. 162. The clerk shall enter causes upon the calendar of the court according to the date of the issue. Causes once placed upon the calendar for a general or special term, if not tried or heard at such term, shall remain upon the calendar from court to court until finally disposed of.

Either party may bring issue to trial Sec. 163. Either party may bring the issue to a trial or to a hearing, and in the absence of the adverse party (unless the court, for good cause, otherwise direct), may proceed with his case and take a dismissal of the action, or a verdict of judgment, as the case may require.

Postponement of trial. Sec. 164. A motion to postpone a trial on the ground of the absence of evidence shall only be made upon affidavit showing the materiality of the evidence expected to be obtained and that due diligence has been used to procure it. The court may also require the moving party to state upon affidavit the evidence which he expects to obtain; and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed.

Deposition of witness may be taken. Sec. 165. The party obtaining a postponement of a trial in any court of record must, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance be then taken by a deposition before a judge or clerk of the court in which the case is pending, or before such notary public as the court shall indicate which must accordingly be done; and the testimony so taken may be read on the trial with the same effect, and subject to the same objections as if the witness was produced.

CHAPTER XIII.

Trial by Jury.

SECTION 166. Jury how drawn.
167. Challenge to, and for cause.
168. Challenge for cause.
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170. Jury, how sworn.
171. Juror becoming sick.
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177. Court may adjourn during absence of jury, sealed verdict.
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189. Preparing and submitting findings.
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195. Challenge, trial by referees.
196. Report of referees.
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FORMATION OF JURY.

Jury how drawn.

SEC. 166. When the action is called for trial by jury, the clerk shall prepare separate ballots, containing the names of the jurors summoned, who have appeared and not been excused, and deposit them in a box. He shall then draw from the box twelve names, and the persons whose names are drawn shall constitute the jury. If the ballots become exhausted before the jury is complete, or if from any cause, a juror or jurors be excused or discharged, the sheriff shall summon, under the direction of the court, from the citizens of the county, and not from by-standers, so many qualified persons as may be necessary to complete the jury. The jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number not less than three. Such consent shall be entered by the clerk in the minutes of the trial.

Challenge to and for cause.

SEC. 167. Either party may challenge the jurors, but when there are several parties on either side, they shall join in a challenge before it can be made. The challenges shall be to individual jurors, and shall either be peremptory or for cause. Each party shall be entitled to four peremptory challenges. If no peremptory challenges are taken until the panel is full, they must be taken by the parties alternatively, commencing with the plaintiff.

Challenge for cause.

SEC. 168. Challenges for cause may be taken on one or more of the following grounds: *First.* A want of any of the qualifications prescribed by statute to render a person competent as a juror. *Second.* Consanguinity or affinity within the fourth degree to either party. *Third.* Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent, to either party, or being a member of the family of either party, or a party in business with either party, or, being security on any bond or obligation for either party. *Fourth.* Having served as a juror or having been a witness on a previous trial between the same parties for the same cause of action. *Fifth.* Interest on the part of the juror in the event of the action, or in the main question involved in the action, except the interest of the juror as a member or citizen of a municipal corporation. *Sixth.* Having an unqualified opinion or belief as to the merits of the action, founded upon knowledge of its material facts, or of some of them. *Seventh.* The existence of a state of mind in the juror evincing enmity against or bias to or against either party.

Challenge, how tried.

SEC. 169. Challenges for cause shall be tried by the court. The juror challenged, and any other person may be examined as a witness on the trial of the challenge.

Jury how sworn.

SEC. 170. As soon as the jury is completed, an oath or affirmation shall be administered to the jurors, in substance that they, each of them, will, well and truly try the matter in issue between —— the plaintiff, and —— the defendant, and a true verdict render according to the evidence.

CONDUCT OF THE TRIAL.

Juror becoming sick.

SEC. 171. If, after the empaneling of the jury and before a verdict, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case the trial may proceed with the other jurors, or a new jury may be sworn, and the trial begin anew; or the jury may be discharged and a new jury then or afterward empaneled.

Charge to jury. Sec. 172. In charging the jury, the court shall state to them all matters of law which it thinks necessary for their information in giving their verdict; and, if it state the testimony of the case, it shall also inform the jury that they are the exclusive judges of all questions of fact. The court shall furnish to either party, at the time upon request, a statement in writing of the points of law contained in the charge, or shall sign at the time, a statement of such points prepared and submitted by the counsel of either party.

Jury may decide in court or retire—duty of officer. Sec. 173. After hearing the charge, the jury may either decide in court or retire for deliberation. If they retire, they shall be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon thier verdict, or are discharged by the court. The officer shall, to the utmost of his ability, keep the jury together, separate from other persons; he shall not suffer any communication to be made to them, or make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict; and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

What papers jury may take. Sec. 174. Upon retiring for deliberation, the jury may take with them all papers which have been received as evidence in the case, except depositions and copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession; and they may also take with them notes of the testimony, or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

Return of jury for instruction, and how given. Sec. 175. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court, the information required shall be given in the presence of or after notice to the parties or counsel.

Proceedings when jury discharged without verdict. Sec. 176. In all cases where a jury are discharged, or prevented from giving a verdict, by reason of accident or other cause, during the progress of the trial, or after the cause is submitted to them, the action may be again tried immediately, or at a future time, as the court may direct.

Court may adjourn during absence of jury. Sec. 177. While the jury are absent, the court may adjourn, from time to time, in respect to other business; but it shall nevertheless be deemed open for every purpose connected with the cause submitted to the jury, until a verdict is rendered, or the jury discharged. The court may direct the jury to bring in a sealed verdict, at the opening of the court, in case of an agreement during recess, or adjournment for the day. A final adjournment of the court for the term shall discharge the jury.

Verdict, how given. SEC. 178. When the jury shall have agreed upon their verdict, they shall be conducted into court by the officer having them in charge, their names shall then be called, and they shall be asked by the court, or clerk whether they have agreed upon their virdict; and if the foreman answer in the affirmative, they shall on being required, declare the same; either party may require the jury to be polled.

May be corrected. SEC. 179. If the verdict be informal or insufficient in not covering the whole issue or issues submitted, the verdict may be corrected by the jury, under the advice of the court, or the jury may be again sent out.

How recorded, juror disagreeing, to be sent out again. SEC. 180. When the verdict is given, and is not informal or insufficient, the clerk shall immediately record it in full, in the minutes, and shall read it to the jury, and iuquire of them whether it be their verdict. If any juror disagree, the jury shall be again sent out; but if no disagreement be expressed, the verdict shall be complete, and the jury shall be discharged from the case.

THE VERDICT.

Kinds of verdict. SEC. 181. The verdict of the jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant; a special verdict is that by which the jury find the facts only, leaving the judgment to the court. The special verdict shall present the conclusions of fact established by the evidence, and not the evidence to prove them; and those conclusions of fact shall be so presented as that nothing shall remain to the court but to draw from them conclusions of law.

Kinds of verdict. SEC. 182. In an action for the recovery of money only, or specific real property, the jury in their discretion, may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict in writing upon all or any of the issues, and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact to be stated in writing, and may direct a written finding thereon. The special finding or verdict shall be filed with the clerk and entered upon the minutes. Where a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

When to find amount of recovery.

SEC. 183. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a counter claim for the recovery of money is established exceeding the amount of the plaintiff's claim as established, the jury shall also find the amount of the recovery.

Verdict in action to recover specific property.

SEC. 184. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintff, or the defendant by his answer claim a return thereof, the jury, if their verdict be in favor of the plaintiff, or if, being in favor of the defendant, they also find that he is entitled to a return thereof, shall find the value of the property, and, if so instructed, the value of specific portions thereof, and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

Entry in minutes.

SEC. 185. Upon receiving a verdict, an entry shall be made by the clerk in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses, and the verdict; and where a special verdict is found, either the judgment rendered thereon, or, if the case be reserved for argument or further consideration, the order thus reserving it.

TRIAL BY THE COURT.

Jury trial may be waived.

SEC. 186. Trial by jury may be waived by the several parties to an issue of fact in an action arising on contract, or for the recovery of specific real or personal property, with or without damages, and with the assent of the court in other actions, in the manner following: *First.* By failing to appear at the trial. *Second.* By written consent in person, or by attorney, filed with the clerk. *Third.* By oral consent, in open court, entered in the minutes.

Decision of court.

SEC. 187. Upon the trial of a question of fact by the court, its decision shall be given in writing and filed with the clerk within ten days after the cause is submitted for decision. In giving the decision the facts found and the conclusions of law shall be separately stated. Judgment upon the decision shall be entered accordingly.

Findings of fact may be waived.

SEC. 188. Findings of fact may be waived by the several parties to an issue of fact: *First.* By failing to appear at the trial. *Second.* By consent, in writing, filed with the clerk. *Third.* By oral consent, in open court, entered in the minutes.

Preparing and submitting findings.

SEC. 189. At the time the cause is submitted the judge may direct either or both of the parties to prepare findings of facts, unless they have been waived, and when so directed the party must, within two days, prepare and serve upon his adversary and submit to the judge such findings, and may, within two days thereafter, briefly suggest in writing to the judge why he desires findings upon the points included within the findings prepared by himself, or why he objects to findings upon the points included within the findings prepared by his adversary. The judge may adopt, modify or reject the findings so submitted. If at the time of the submission of the cause the judge does not direct the preparation of findings, or those prepared are rejected, then he must himself prepare the findings.

Judgment and reference.

SEC. 190. On a judgment for the plaintiff upon an issue of law, he may proceed in the manner prescribed by the first two subdivisions of section one hundred and fifty-six upon the failure of the defendant to answer. If judgment be for the defendant upon an issue of law, and the taking of an account or the proof of any fact be necessary to enable the court to complete the judgment, a reference may be ordered, as in that section provided.

OF REFERENCES AND TRIALS BY REFEREE.

Reference.

SEC. 191. A reference may be ordered upon the agreement of the parties filed with the clerk or entered in the minutes—*First,* to try any or all of the issues in an action or proceeding, whether of fact or of law, and to report a finding and judgment thereon; *second,* to ascertain a fact necessary to enable the court to determine an action or proceeding.

In what cases.

SEC. 192. When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in the following cases: When the trial of an issue of fact requires the examination of a long account on either side, in which case the referees may be directed to hear and decide the whole issue, or to report upon any specific question of fact involved therein; or when the taking of an account shall be necessary for the information of the court before the judgment, or for carrying a judgment or order into effect; or when a question of fact other than upon the pleadings shall arise, upon motion or otherwise, in any stage of the action; or when it is necessary for the information of the court in a special proceeding.

Sec. 193. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the party do not agree, the court or judge may appoint one or more, not exceeding three, who reside in the county in which the action or proceeding is triable, and against whom there is no legal objection. Referees.

Sec. 194. When the appointment of referees is made by the judge, each referee shall be—*First*, qualified as a juror as provided by statute; *second*, competent as a juror between the parties. Qualifications.

Sec. 195. When the referees are chosen by the court, each party shall have the same right to challenge as to such referees, to be made and determined in the same manner and with like effect as in the formation of juries, except that neither party shall be entitled to a peremptory challenge. Subject to the limitations and directions prescribed in the order of reference, the trial by referees shall be conducted in the same manner as a trial by the court. They shall have the same power to grant adjournments, to administer oaths, to preserve order, and punish all violations thereof, upon such trial, and to compel the attendance of witnesses, and to punish them for non-attendance or refusal to be sworn or to testify, as is possessed by the court. The objections taken to the appointment of any person as referee must be heard and disposed of by the court. Affidavits may be read and witnesses examined as to such objections. Challenge; trial by referees.

Sec. 196. The referees must report their findings in writing to the court within twenty days after the testimony is closed, and the facts found and the conclusions of law must be separately stated therein. Report of referees.

Sec. 197. The finding of the referee upon the whole issue must stand as the finding of the court, and upon filing of the finding with the clerk of the court, judgment may be entered thereon in the same manner as if the action had been tried by the court. Finding and judgment.

Sec. 198. The findings of the referee may be excepted to and reserved in like manner as is made by the court. When the referee is to report the facts, the finding reported has the effect of a special verdict. May be excepted to; effect of.

Sec. 199. The report shall be filed with the clerk; if filed in term time, either party may, within such time as may be prescribed by the rules of court, or by special order, move to set the same aside or for judgment thereon, or such order or proceeding as the nature Court may affirm or set aside.

of the case may require. If the report be filed in vacation, the like proceedings may be had at the next term following. The court may affirm or set aside the report, either in whole or in part. If it affirm the report, it shall give judgment accordingly. If the report be set aside, either in whole or in part, the court may make another order of reference as to all or to so much of the report as is set aside to the original referees, or others, or it may find the facts and determine the law itself, and give judgment accordingly. Upon a motion to set aside a report, the conclusion thereof shall be deemed and considered as the verdict of a jury.

CHAPTER XIV.

Exceptions.

SECTION 200. Exception defined.
201. Exceptions, when implied.
202. Exceptions, how taken.
203. Bill of exceptions.
204. Settlement of.
205. Exceptions after judgment.
206. When exception is refused, application to Supreme Court to prove same.
207. Proceedings where judge ceases to hold office.

Exception defined.

SEC. 200. An exception is an objection upon a matter of law to a decision of a court, judge, or referee, in an action or proceeding, and may be taken by either party to any decision made either before or after judgment, and, except as provided in the following sections, it must be taken at the time the decision is made.

Exceptions when implied.

SEC. 201. The adverse party is deemed to have excepted to the verdict of the jury, or the final decision of the court or referee, to an order granting or refusing a new trial, sustaining or overruling a demurrer, striking out a pleading or any part thereof, granting or refusing a continuance, granting or refusing to change the place of trial; and is also deemed to have excepted to every order, ruling, or proceeding made or had in the action or proceeding, either before or after judgment, upon an *ex parte* application.

Exceptions, how taken.

SEC. 202. No particular form of exception is required. The objection must be stated, with so much of the evidence or other matter as is necessary to explain it, and no more. But when the exception is to the verdict or decision upon the grounds of the insufficiency of the evidence to sustain it, the objection must specify the particulars in which such evidence is alleged to be insufficient.

Bill of exceptions.

SEC. 203. A bill containing the exception to any ruling may be presented to the judge at the time the ruling is made. It must be conformable to the truth, or be at the time corrected until it is so, and signed by the judge and filed by the clerk.

Settlement of.

SEC. 204. When a party desires to have an exception, taken at a trial, settled in a bill of exceptions, he must, within ten days after the entry of judgment, if the action were tried with a jury, or after receiving the notice of entry of judgment, if the action were tried without a jury, or such further time as the court in which the action is pending, or a judge thereof, may allow, prepare the draft of a bill and serve the same, or a copy thereof, upon the adverse party. Such draft must contain all the exceptions taken upon which the party relies. Within ten days after such service the adverse party may propose amendments thereto, and serve the same, or a copy thereof, upon the other party. The proposed bill and amendments must, within ten days thereafter, be presented by the party seeking the settlement of the bill to the judge who tried or heard the case, upon five days' notice to the adverse party, or be delivered to the clerk of the court for the judge. When received by the clerk he must immediately deliver them to the judge, if he be in the county; if he be absent from the county, and either party desire the papers to be forwarded to the judge, the clerk must, upon notice in writing of such party, immediately forward them by mail or other safe channel; if not thus forwarded, the clerk must deliver them to the judge immediately after his return to the county. When received from the clerk, the judge must designate the time at which he will settle the bill, and the clerk must immediately notify the parties of such designation. At the time designated the judge must settle the bill. If the action was tried before a referee, the proposed bill, with the amendments, if any, must be presented to such referee for settlement within ten days to the adverse party, and thereupon the referee shall settle the bill. If no amendments are served, or if served and allowed, the proposed bill may be presented, with the amendments, if any, to the judge or referee for settlement, without notice to the adverse party. It is the duty of the judge or referee, in settling the bill, to strike out of it all redundant and useless matter, so that the exceptions may be presented as briefly as possible. When settled, the bill must be signed by the judge or referee, with his certificate to the effect that the same is correct and is allowed, and shall then be filed with the clerk.

Exceptions after judgment, etc.

Sec. 205. Exceptions to any decision made after judgment may be presented to the judge at the time of such decision, and be settled or noted, as provided in section two hundred and three, and a bill thereof may be presented and settled afterwards, as provided in section two hundred and four, and within like periods after entry of the order, upon appeal from which such decision is renewable.

When exception is refused; application to Supreme Court to prove same.

Sec. 206. If the judge in any case refuse to allow an exception in accordance with the facts, the party desiring the bill settled may apply by petition to the Supreme Court to prove the same. The application may be made in the mode and manner and under such regulations as that court may prescribe, and the bill, when proven, must be certified by one of the justices of said court as correct and filed with the clerk of the court in which the action was tried, and when so filed, it has the same force and effect as if settled by the judge who tried the cause.

Proceedings when judge ceases to hold office.

Sec. 207. If the judge who presided at the trial ceases to hold office before the bill is tendered or settled, he may nevertheless settle such bill, or the party may, as provided in the preceding section, apply to the Supreme Court to prove the same.

CHAPTER XV.

New Trials.

Section 208. New trial defined.
209. When new trial may be granted.
210. On what papers moved for.
211. Notice of intention, when to be filed and what to contain:
First—On affidavits.
Second—On bill of exceptions.
Third—On statement.
Fourth—On minutes of court.
212. What constitutes record to be used on appeal.
213. New trial by order of court, or how reviewed.
214. Motion, when may be heard.

New trial defined.

Sec. 208. A new trial is a re-examination of an issue of fact, in the same court, after a trial and decision by a jury, court or referees.

SEC. 209. The former verdict or other decision may be vacated, and a new trial granted, on the application of the party aggrieved, for any of the following causes materially affecting the substantial rights of the party: *First.* Irregularity in the proceedings of the court, jury, or adverse party, or any order of the court or abuse of discretion by which either party was prevented from having a fair trial. *Second.* Misconduct of the jury; and whenever any one or more of the jurors have been induced to assent to any general or special verdict, or to a finding on any question submitted to them by the court, by a resort to the determination of chance, such conduct may be proved by the affidavit of any one of the jurors. *Third.* Accident or surprise, which ordinary prudence could not have guarded against. *Fourth.* Newly discovered evidence material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial. *Fifth.* Excessive damages, appearing to have been given under the influence of passion or prejudice. *Sixth.* Insufficiency of the evidence to justify the verdict or other decision, or that it is against law. *Seventh.* Error in law occurring at the trial and excepted to by the party making the application. **When new trial may be granted.**

SEC. 210. When the application is made for a cause mentioned in the first, second, third and fourth subdivisions of the last section, it must be made upon affidavits; for any other cause it may be made, at the option of the moving party, either upon the minutes of the court, or a bill of exception, or a statement of the case prepared as hereinafter provided. **On what papers moved for.**

SEC. 211. The party intending to move for a new trial must, within ten days after the verdict of the jury, if the action were tried by a jury, or after notice of the decision of the court or referee, if the action were tried without a jury, file with the clerk and serve upon the adverse party a notice of his intention, designating the grounds upon which the motion will be made, and whether the same will be made upon affidavits, or the minutes of the court, or a bill of exception, or a statement of the case. **Notice of intention, when to be filed and what to contain.**

First—If the motion is to be made upon affidavits, the moving party must, within ten days after serving the notice, or such further time as the court in which the action is pending, or a judge thereof, may allow, file such affidavits with the clerk and serve a copy upon the adverse party, who shall have ten days to file counter affidavits, a copy of which must be served upon the moving party. **On affidavits.**

On bill of exceptions. *Second*—If the motion is to be made upon a bill of exceptions, and no bill has already been settled as hereinbefore provided, the moving party shall have the same time after service of the notice to prepare and obtain a settlement of a bill of exceptions as is provided after the entry of judgment, or after receiving notice of such entry, by section two hundred and four, and the bill shall be prepared and settled in a similar manner. If a bill of exceptions has been already settled and filed when the notice of motion is given, such bills shall be used on the motion.

On statement. *Third*—If the motion is to be made on a statement of the case, the moving party must, within ten days after service of the notice, or such further time as the court in which the action is pending, or the judge thereof, may allow, prepare a draft of the statement, and serve the same, or a copy thereof, upon the adverse party. If such proposed statement be not agreed to by the adverse party, he must, within ten days thereafter, prepare amendments thereto, and serve the same, or a copy thereof, upon the moving party. If the amendments be adopted, the statement shall be amended accordingly, and then presented to the judge who tried or heard the cause for settlement, or be delivered to the clerk of the court for the judge. If not adopted, the proposed statement and amendments shall, within ten days thereafter, be presented by the moving party to the judge, upon five days' notice to the adverse party, or delivered to the clerk of the court for the judge, and thereupon the same proceedings for the settlement of the statement shall be taken by the parties, and clerk and judge as are required for the settlement of bills of exception by section two hundred and four. If the action was heard by a referee, the same proceedings shall be had for the settlement of the statement by him as are required by that section for the settlement of bills of exception by a referee. If no amendments are served within the time designated, or, if served and allowed, the proposed statement and amendments, if any, may be presented to the judge or referee for settlement without notice to the adverse party. When the notice of the motion designates, as the ground of the motion, the insufficiency of the evidence to justify the verdict or other decision, the statement shall specify the particulars in which such evidence is alleged to be insufficient. When the notice designates, as the ground of the motion, errors in law occurring at the trial, and excepted to by the moving party, the statement shall specify particular errors upon which the party will rely. If no such specifications be made, the statement shall be disregarded on the hearing of the motion. It is the duty of the judge or referee, in settling the statement, to strike out of it all redundant and useless matter, and to make the statement truly represent the case, notwithstanding the assent of the parties to such redundant and useless matter, or to any inaccurate statement. When settled, the statement shall be signed by the judge or referee, with his certificate to the effect that the same is allowed, and shall then be filed with the clerk.

On minutes of court.

Fourth—When the motion is to be made upon the minutes of the court, and the ground of the motion is the insufficiency of the evidence to justify the verdict or other decision, the notice of motion must specify the particulars in which the evidence is alleged to be insufficient; and, if the ground of the motion be errors in law occurring at the trial, and excepted to by the moving party, the notice must specify the particular errors upon which the party will rely. If the notice do not contain the specifications here indicated, when the motion is made on the minutes of the court, the motion must be denied.

What constitutes record to be used on appeal.

SEC. 212. The judgment roll and the affidavits, or bill of exceptions, or statement, as the case may be, used on the hearing, with a copy of the order made, shall constitute the record to be used on appeal from the order granting or refusing a new trial, unless the motion be made on the minutes of the court, and in that case the judgment roll and a statement to be subsequently prepared, with a copy of the order, shall constitute the record on appeal. Such subsequent statement shall be proposed by the party appealing, or intending to appeal, within ten days after the entry of the order, or such further time as the court in which the action is pending, or a judge thereof, may allow, and the same, or a copy thereof, be served upon the adverse party, who shall have ten days thereafter to prepare amendments thereto and serve the same, or a copy thereof, upon the party appealing, or intending to appeal; and thereafter proceedings shall be had, and within like periods, for the settlement of the statement, as provided by section two hundred and eleven; but the statement shall only contain the grounds argued before the court for a new trial, and so much of the evidence or other matter as may be necessary to explain them; and it shall be the duty of the judge to exclude all other evidence or matter from the statement.

Subsequent statement.

New trial by order of court.

Order how reviewed.

SEC. 213. The verdict of a jury may also be vacated, and a new trial granted by the court in which the action is pending, on its own motion, without the application of either of the parties, when there has been such a plain disregard by the jury of the instructions of the court, or the evidence in the case, as to satisfy the court that the verdict was rendered under a misapprehension of such instructions, or under the influence of passion or prejudice. The order of the court may be reviewed on appeal in the same manner as orders made on motion for a new trial, and a statement to be used on such appeal may be prepared in the same manner as statements after a motion is heard upon the minutes of the court, as provided in section two hundred and twelve.

Motion when may be heard.

SEC. 214. When the action is tried by a District Judge in his district, out of the county of his residence, the motion for a new trial may, upon the consent of parties, be brought to a hearing before such judge at chambers, or in open court, in the county of his residence, or in any other county of his district.

CHAPTER XVI.

The Manner of Giving and Entering Judgment.

SECTION 215. Judgment to be entered in twenty-four hours.
216. Case may be brought for argument.
217. Counter claim exceeding plaintiff's demand.
218. *In replevin* judgment to be in the alternative and with damages.
'Gold coin or currency judgment.
119. Judgment-book.
220. Judgment after death.
221. Judgment-roll, what constitutes.
222. Judgment roll.
223. Docket, how kept, and what to contain.
224. Docket opên for inspection.
225. Transcript filed in any county becomes a lien there.

Judgment to be entered in twenty-four hours.

SEC. 215. When the trial by jury has been had, judgment shall be entered by the clerk, in conformity to the verdict, within twenty-four hours after the rendition of the verdict, unless the court order the case to be reserved for argument, or further consideration, or grant a stay of proceedings.

Case may be brought for argument.

SEC. 216. When the case is reserved for argument or further consideration, as mentioned in the last section, it may be brought by either party before the court for argument.

Counter-claim exceeding plaintiff's demand.

SEC. 217. If a counter-claim, established at the trial, exceed the plaintiff's demand, judgment for the defendant shall be given for the excess; or, if it appear that the defendant is entitled to any other affirmative relief, judgment shall be given accordingly.

In replevin; judgment to be in the alternative and with damages.

SEC. 218. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or value thereof, in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for the return of the property, or the value thereof, in case a return cannot be had, and damages for taking and withholding the same. In an action on a contract or obligation in writing for the direct payment of money, made payable in a specified kind of money or currency, judgment for the plaintiff, whether it be by default or after verdict, may follow the contract or obligation, and be made payable in the kind of money or currency specified therein; and in all actions for the recovery of money, if the plaintiff allege in his complaint that the same was understood and agreed by the respective parties to be payable in a specified kind of money or currency, and this fact is admitted by the default of the defendant or established by evidence, the judgment for the plaintiff must be made payable in the kind of money or currency so alleged in the complaint; and in an action against any person for the recovery of money received by such person in a fiduciary capacity, or to the use of another, judgment for the plaintiff must be made payable in the kind of money or currency so received by such person.

Gold coin or currency judgment.

Judgment Book.

SEC. 219. The clerk shall keep among the records of the court a book for the entry of judgments, to be called the Judgment Book, in which each judgment shall be entered, and shall specify clearly the relief granted, or other determination of the action.

Judgment after death.

SEC. 220. If a party die after a verdict or decision upon any issue of fact, and before judgment, the court may nevertheless render judgment thereon. Such judgment shall not be a lien on the real property of the deceased party, but shall be payable in the course of administration on his estate.

Judgment roll, what constitutes.

SEC. 221. Immediately after entering judgment, the clerk must attach together and file the following papers, which constitute the judgment roll: *First.* In case the complaint be not answered by any defendant, the summons, with the affidavit or proof of service and the complaint, with a memorandum endorsed thereon that the default of the defendant in not answering was entered, and a copy of the judgment. *Second.* In all other cases, the pleadings, a copy of the verdict of the jury, or finding of the court or referee, and a copy of any order made on demurrer or relating to a change of parties, and a copy of the judgment. If there are two or more defendants in the action, and any one of them has allowed judgment to pass against him by default, the summons, with proof of its service upon such defendant, must also be added to the other papers mentioned in this subdivision.

Judgment lien.

SEC. 222. Immediately after the filing of the judgment roll, the clerk shall make the proper entries of the judgment, under appropriate heads, in the docket kept by him; and, from the time the judgment is docketed, it shall become a lien upon all the real property of the judgment debtor, not exempt from execution, in the county owned by him at the time, or which he may afterwards acquire, until the said lien expires. The lien shall continue for two years, unless the judgment be previously satisfied.

Docket.

SEC. 223. The docket mentioned in the last section is a book which the clerk shall keep in his office, with each page divided into eight columns, and headed as follows: Judgment Debtors; Judgment Creditors; Judgment; Time of Entry; Where Entered in Judgment Book; Appeals—When Taken; Judgment of Appellate Court; Satisfaction of Judgment, when Entered. If judgment be for the recovery of money or damages, the amount shall be stated in the docket under the head of Judgment; if the judgment be for any other relief, a memorandum of the general character of the relief granted shall be stated. The names of the defendants shall be entered in the docket in alphabetical order.

Docket open for inspection.

SEC. 224. The docket kept by the clerk shall be open at all times, during office hours, for the inspection of the public, without charge; and it shall be the duty of the clerk to arrange the several dockets kept by him in such a manner as to facilitate their inspection.

Transcript filed in any county becomes a lien there.

SEC. 225. A transcript of the original docket, certified by the clerk, may be filed with the Recorder of any other county; and, from the time of the filing, the judgment shall become a lien upon all the real property of the judgment debtor, not exempt from execution, in such county owned by him at the time, or which he may afterwards acquire, until the said lien expires. The lien shall continue for two years, unless the judgment be previously satisfied.

CHAPTER XVII.

Of the Execution of Judgment in Civil Actions.

SECTION 226. Time when execution may issue.
227. Who may issue the execution, its form, to whom directed, and what it shall require.
228. Satisfaction of judgment.
229. Execution against joint property.
230. When made returnable.
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232. Execution after five years.
233. Execution may issue after death of party.
234. Execution, how and to whom issued.
235. What shall be liable to be seized on execution.
236. Property of married woman exempt from execution against her husband.
237. What exempt from execution.
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240. Property when claimed by third persons.
241. Writ, how executed.
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250. Sale absolute or not; certificate; what to contain.
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253. When debtor or other redemptioner may redeem.
254. Payments on redemption, to whom made.
255. What a redemptioner must do in order to redeem.
256. Court may restrain waste; what considered waste.
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THE EXECUTION.

Time when execution may issue.

SEC. 226. The party in whose favor the judgment is given may, at any time within five years from the entry thereof, issue a writ of execution for its enforcement, as prescribed in this chapter of this act.

Who may issue the execution, its form, to whom directed, and what it shall require.

SEC. 227. The writ of execution shall be issued in the name of the people of the United States in the Territory of Idaho, sealed with the seal of the court, and subscribed by the clerk, and shall be directed to the sheriff, and shall intelligibly refer to the judgment, stating the court, the county where the judgment roll is filed, and, if it be for money, the amount thereof, and the amount actually due thereon, and if made payable in a specified kind of money or currency, as provided in section two hundred and eighteen, the execution shall also state the kind of money or currency in which the judgment is payable, and shall require the sheriff substantially as follows:

First—If it be against the property of the judgment debtor, it shall require the sheriff to satisfy the judgment, with interest, out of the personal property of such debtor; and if sufficient personal property cannot be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the judgment was docketed, or, if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the recorder of such county, stating such day or any time thereafter.

Second—If it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff to satisfy the judgment, with interest, out of such property.

Third—If it be against the person of the judgment debtor, it shall require the sheriff to arrest such debtor and commit him to the jail of the county until he pays the judgment, with interest, or be discharged according to law.

Fourth—If it be issued on a judgment made payable in a specified kind of currency, as provided in section two hundred and eighteen of this act, it shall also require the sheriff to satisfy the same in the kind of money or currency in which said judgment is made payable, and the sheriff shall refuse payment in any other kind of money or currency; and in case of levy and sale of the property of the judgment debtor, he shall refuse payment from any purchaser at such sale in any other kind of money or currency than that specified in the execution. The sheriff collecting money or currency in the manner required by this act shall pay to the plaintiff, or party entitled to recover the same, the same kind of money or currency received by him, and in case of neglect or refusal so to do, he shall be liable, on his official bond, to the judgment creditor in three times the amount of the money so collected.

Fifth—If it be for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto; and may, at the same time, require the sheriff to satisfy any costs, damages, rents or profits recovered by the same judgment out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was rendered to be specified therein if a delivery thereof cannot be had; and if sufficient personal property cannot be found, then out of the real property, as provided in the first subdivision of this section.

Satisfaction of judgment

SEC. 228. Satisfaction of a judgment may be entered in the clerk's docket upon an execution returned satisfied, or upon an acknowledgment of satisfaction filed with the clerk, made in the manner of an acknowledgment of a conveyance of real property, by the judgment creditor; or by his endorsement on the face or on the margin of the record of the judgment; or by the attorney, unless a revocation of his authority be previously filed. Whenever a judgment shall be satisfied in fact, otherwise than upon an execution, it shall be the duty of the party or attorney to give such acknowledgment, or make such endorsement, and, upon motion, the court may compel it, or may order the entry of satisfaction to be made without it.

Execution against joint property.

SEC. 229. When a writ of execution is issued on a judgment recovered against two or more persons in an action upon a joint contract, in which action all the defendants were not served with summons, or did not appear, it shall direct the sheriff to satisfy the judgment out of the joint property of all the defendants, and the individual property only of the defendants who were served or who appeared in the action. In other respects the writ shall contain the directions specified in subdivisions one and four of section two hundred and twenty seven.

When made returnable.

SEC. 230. The execution may be made returnable at any time, not less than ten nor more than sixty days, after its receipt by the sheriff to the clerk with whom the judgment roll is filed. When the execution shall have been returned, it shall be the duty of the clerk to attach the same to the judgment roll. If any real estate be levied upon, the clerk shall record the execution and the return thereto at large, and certify the same, under his hand, as true copies, in a book to be called the "Execution Book," which book shall be indexed with the names of plaintiffs and defendants in execution, alphabetically arranged, and kept open at all times during office hours for the inspection of the public, without charge, and shall be evidence of the contents of the originals whenever they, or any part thereof, may be destroyed, lost or mutilated.

Money judgments and others how enforced. SEC. 231. Where the judgment requires the payment of money or the delivery of real or personal property, the same may be enforced by a writ of execution; when it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom the same is rendered or upon the person or officer required thereby or by law to obey the same. Obedience thereto may be enforced by the court; and after a final judgment of partition, the court shall have power to enfore a severance of the possession.

Execution after five years. SEC. 232. In all cases other than for the recovery of money the judgment may be enforced or carried into execution after the lapse of five years from the date of its entry, by leave of the court, upon motion, or by judgment for that purpose founded on supplemental pleadings.

Execution may issue after death of party. SEC. 233. Notwithstanding the death of a party after the judgment, execution thereon may be issued, in case of the death of the plaintiff, the same as if he were living, upon the application of his executor or administrator, or successor in interest, by the court in which the judgment was rendered or exists. And in case of the decease of the defendant, if the judgment be for the recovery of real or personal property, execution may be issued and executed against the property recovered in the same manner and with the same effect as if he were still living.

Execution how and to whom issued. SEC. 234. Where the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county in the Territory. Where it requires the delivery of real or personal property, it shall be issued to the sheriff of the county where the property, or some part thereof, is situated. Executions may be issued at the same time to different counties.

What shall be liable to be seized on execution. SEC. 235. All goods, chattels, moneys, and other property, real and personal, of the judgment debtor, not exempt by law, and all property and rights of property seized and held under attachment in the action shall be liable to execution. Until a levy, property shall not be affected by the execution. Shares and interests in any corporation or company and other debts and credits, and other property not capable of manual delivery, may be attached on execution in like manner as upon writs of attachment. Gold dust and gold and silver bullion shall be returned by the officer as so much money collected at it its current value, without exposing the same to sale.

Property of married woman exempt from execution against her husband

SEC. 236. All real and personal estate belonging to any married woman at the time of her marriage, and all which she may have acquired subsequently to such marriage, or to which she shall afterward become entitled in her own right, and all her personal earnings, and all the issues, rents and profits of such real estate, shall not be liable to attachment for execution upon any liability or judgment against the husband, so long as she or any minor child of her body shall be living; *provided*, that her separate property shall be liable for debts owing by her at the time of her marriage.

What exempt from execution.

SEC. 237. The following property shall be exempt from execution, except as herein otherwise specially provided:

First—Chairs, tables, desks and books, to the value of one hundred dollars, belonging to the judgment debtor.

Second—Necessary household, table and kitchen furniture belonging to the judgment debtor, including stove, stovepipe and stove furniture of whatever kind, wearing apparel, beds, bedding and bedsteads, and provisions actually provided for individual or family use sufficient for three months.

Third—The farming utensils or implements of husbandry of the judgment debtor; also, two oxen, or two horses, or two mules, and their harness; two cows, one cart or wagon, and food for such oxen, horses, cows, or mules, for three months; also, all seed grain or vegetables actually provided, reserved, or on hand for the purpose of planting or sowing at any time within the ensuing six months, not exceeding in value the sum of two hundred dollars; the tools and implements of a mechanic necessary to carry on his trade; the instruments and chests of a surgeon, physician, surveyor, and dentist necessary to the exercise of their profession, with the professional library; and the law libraries of an attorney and counsellor; also, the wardrobe and books of an actor.

Fourth—The tents and furniture, including a table, camp-stools, bed and bedding of a miner; also his rocker, shovels, spades, wheelbarrows, pumps, and other instruments used in mining, with provisions necessary for his support for three month.

Fifth—Two oxen, two horses, or two mules, and their harness, and one cart or wagon, by the use of which a cartman, teamster, or other laborer, habitually earns his living, and the food for such oxen, horses, or mules, for three months; and a horse used by a physician in making his professional visits.

Sixth—All fire engines, with carts, buckets, hose, and apparatus thereto appertaining, of any fire company or department organized under any law of this Territory.

Seventh—All arms and accoutrements required by law to be kept by any person. But no article mentioned in this section shall be exempt from execution issued upon a judgment recovered for its price, or upon a mortgage thereon.

Eighth—All court houses, jails, public offices and buildings, lots, ground and personal property, the fixtures, furniture, books, papers, and appurtenances belonging and pertaining to the court house, jail and public offices, belonging to any county in this Territory; and all cemeteries, public squares, parks and public buildings, town halls, markets, buildings appertaining to the fire departments, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by such town or city to health, ornament, or public use.

Waiver of exemption.

SEC. 238. Any single man, or married man (his wife joining him in the waiver), may waive the benefit, if they act by an agreement in writing, to be witnessed and acknowledged in the manner required in a deed conveying real estate.

Defendant may select.

SEC. 239. In all cases the defendant himself may select the property which is exempt.

Property when claimed by third persons.

SEC. 240. If the property levied on be claimed by a third person as his property, the sheriff shall summon from his county six persons, qualified as jurors, between the parties, to try the validity of the claim. He shall also give notice of the claim, and of the time of trial, to the plaintiff, who may appear and contest the claim before the jury. The jury and the witnesses shall be sworn by the sheriff, and if their verdict be in favor of the claimant, the sheriff shall relinquish the levy, unless the judgment creditor give him a sufficient indemnity for proceeding thereon. The fees of the jury, the sheriff and the witnesses shall be paid by the claimant, if the verdict be against him; otherwise, by the plaintiff. On the trial the defendant and the claimant may be examined by the plaintiff as witnesses.

Writ how executed.

SEC. 241. The sheriff shall execute the writ against the property of the judgment debtor by levying on a sufficient amount of property, if there be sufficient; collecting or selling the things in action, and selling the other property, and paying to the plaintiff, or his attorney, so much of the proceeds as will satisfy the judgment, or depositing the amount with the clerk of the court. Any excess of the proceeds over the judgment and the sheriff's fees shall be returned to the judgment debtor. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and the sheriff's fees, within the view of the sheriff, he shall levy only on such part of the property as the judgment debtor may indicate; *provided*, that the judgment debtor be present and indicate at the time of the levy such part; *and provided*, that the property indicated be amply sufficient to satisfy such judgment and fees.

Notice of sale how given.

SEC. 242. Before the sale of property on execution notice thereof shall be given as follows:

First—In case of perishable property, by posting written notices of the time and place of sale in three public places of the precinct, township or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property.

Second—In case of other personal property, by posting similar notices in three public places in the precinct, township or city where the sale is to take place not less than five nor more than ten days successively.

Third—In case of real property, by posting similar notices, particularly describing the property, for twenty days successively, in three public places of the precinct, township or city where the property is situated and also where the property is to be sold, and publish a copy thereof once a week for the same period in some newspaper published in the county, if there be one.

Fourth—When the judgment under which the property is sold is made payable in a specified kind of money or currency, the several notices required by this section shall state the kind of money or currency in which bids may be made at such sale, which shall be the same as that specified in the judgment.

Selling without notice; penalty.

SEC. 243. An officer selling without the notice prescribed by the last section shall forfeit five hundred dollars to the aggrieved party in addition to his actual damages; and a person wilfully taking down or defacing a notice posted, if done before the sale or satisfaction of the judgment (if the judgment be satisfied before the sale), shall forfeit five hundred dollars.

Sales how conducted.

SEC. 244. All sales of property under execution shall be made at auction to the highest bidder, and shall be made between the hours of nine in the morning and five in the afternoon. After sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the officer holding the execution nor his deputy shall become a purchaser at such sale. When the sale is of personal property, capable of manual delivery, it shall be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest prices; and when the sale is of real property, and consists of several known lots or parcels, they shall be sold separately; or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately; and the sheriff shall be bound to follow such directions.

When purchaser refuses to pay purchase money.

SEC. 245. If a purchaser refuse to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property, at any time, to the highest bidder; and if any loss be occasioned thereby, the officer may recover the amount of such loss, with costs, by motion, upon previous notice of five days before any court, or before any justice of the peace, if the same shall not exceed his jurisdiction.

Summary proceeding.

SEC. 246. Such court or justice shall proceed, in a summary manner, to give judgment and issue execution therefor forthwith; but the defendant may claim a jury. And the same proceeding may be had against any subsequent purchaser who may refuse to pay; and the officer may, in his discretion, thereafter reject the bid of any person so refusing.

Liability of officers.

SEC. 247. The two preceding sections shall not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchasers and the amount collected from the purchaser refusing to pay.

Personal property to be delivered; certificate.

SEC. 248. When the purchaser of any personal property, capable of manual delivery, shall pay the purchase money, the officer making the sale shall deliver to the purchaser the property, and, if desired, shall execute and deliver to him a certificate of the sale and payment. Such certificate shall convey to the purchaser all the right, title and interest which the debtor had in and to such property on the day the execution was levied.

Personal property not delivered; certificate.

SEC. 249. When the purchaser of any personal property not capable of manual delivery shall pay the purchase money, the officer making the sale shall execute and deliver to the purchaser a certificate of sale and payment. Such certificate shall convey to the purchaser all right, title and interest which the debtor had in and to such property on the day the execution was levied.

Sale; certificate what to contain.

SEC. 250. Upon a sale of real property, the purchaser shall be substituted to, and acquire all the right, title, interest and claim of the judgment debtor thereto; and when the estate is less than a leasehold of two years' unexpired term, the sale shall be absolute. In all other cases the property shall be subject to redemption, as provided in this chapter. The officer shall give to the purchachaser a certificate of sale, containing—*First*, a particular description of the real property sold; *second*, the price bid for each distinct lot or parcel; *third*, the whole price paid; *fourth*, when subject to redemption, it shall be so stated. And when the judgment under which the sale has been made is made payable in a specified kind of money or currency, the certificate shall also state the kind of money or currency in which such redemption may be made, and which shall be the same as that specified in the judgment. A duplicate of such certificate shall be filed in the office of the recorder of the county.

By whom may be redeemed.

SEC. 251. Property sold subject to redemption, as provided in the last section, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest: *First.* The judgment debtor, or his successor in interest, in the whole or any part of the property. *Second.* A creditor having a lien by judgment or mortgage on the property sold. The persons mentioned in the second subdivision of this section are in this act termed "redemptioners."

Time of redemption and redemption money.

SEC. 252. The judgment debtor, or a redemptioner, may redeem the property from the purchaser within six months after the sale on paying the purchaser the amount of his purchase, with eighteen per cent. thereon in addition, together with the amount of any assessments or taxes which the purchaser may have paid thereon; and if the purchaser be also a creditor, having a lien prior to that of the redemptioner other than the judgment under which the purchase was made, the amount of such lien, with interest.

When judgment debtor or redemptioner may redeem.

SEC. 253. If the property be so redeemed by a redemptioner, either the judgment debtor or another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner on paying the sum paid on such last redemption, with four per cent. thereon in addition, and the amount of any assessments or taxes which the said last redemptioner may have paid thereon after the redemption by him, with interest on such amount, and the amount of any liens held by said last redemptioner prior to his own, with interest in addition; *provided*, that the judgment under which the property was sold need not be paid at a lien. The property may be again redeemed, and as often as the debtor or a redemptioner, within sixty days after the last redemption, pay the amount of the last redemption, with four per cent. thereon in addition, and the amount of any assessments or taxes which the said last previous redemptioner paid after the redemption by him, with interest thereon, and the amount of any liens other than the judgment under which the property was sold, held by the said last redemptioner previous to his own, with interest. Notice of redemption shall be given to the sheriff. If no redemption be made within six months after sale, the purchaser or his assignee, shall be entitled to a conveyance; or if so redeemed whenever sixty days have expired, and no other redemption has been made, and notice thereof given, the time for redemption shall have expired, and the last redemptioner, or his assignee, be entitled to a sheriff's deed. If the debtor redeem at any time before the time for redemption expires, the effect of the sale shall be terminated, and he be restored to his estate.

Payments on redemption to whom made

SEC. 254. The payments mentioned in the last two sections may be made to the purchaser or redemptioner, as the case may be, or for him, to the officer who made the sale. When the judgment under which the sale has been made is payable in a specified kind of money or currency, said payments shall be made in the same kind of money or currency, and a tender of the money shall be equivalent to payment.

What a redemptioner must do in order to redeem.

SEC. 255. A redemptioner shall produce to the officer, or person from whom he seeks to redeem, and serve with his notice to the sheriff—*First*, a copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court, or of the county, where the judgment is docketed; or, if he redeem upon a mortgage or other lien, a note of the record thereof, certified by the recorder; *second*, a copy of any assignment necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto; and, *third*, an affidavit by himself, or his agent, showing the amount then actually due on the lien.

Court may restrain waste.

What considered waste.

SEC. 256. Until the expiration of the time allowed for redemption, the court may restrain the commission of any waste on the property, by order granted, with or without notice, on the application of the purchaser or the judgment creditor. But it shall not be deemed waste for the person in possession of the property at the time of sale, or entitled to possession afterward during the period allowed for redemption, to continue to use it in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs of buildings thereon, or to use wood or timber on the property therefor, or for the repair of fences, or for fuel in his family, while he occupies the property.

Rents and profits.

SEC. 257. The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, shall be entitled to receive from the tenant in possession the rents, issues and profits of the property sold, or the value of the use and occupation thereof; *provided*, that in the case the property shall be redeemed as provided in this act, the amount of such rents and profits which he may have been entitled to claim or receive, unless such claim shall be re-leased to the person claiming such right of redemption, shall be deducted from the amount which such purchaser or redemptioner would be entitled to receive on such redemption.

When purchaser evicted may recover, and from whom.

SEC. 258. If the purchaser of the real property sold on execution, or his successor in interest, be evicted therefrom in consequence of irregularity in the proceedings concerning the sale or of the removal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser of property at a sheriff's sale, or his successor in interest, fail to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the court having jurisdiction thereof shall, on petition of such party in interest, or his attorneys, revive the original judgment for the amount paid by such purchaser at the sale, with interest thereon, from the time of payment, at the same rate that the original judgment bore; and when so revived, the said judgment shall have the same effect as the original judgment of said court, of that date, and bearing interest as aforesaid; and any other or after acquired property, rents, issues or profits of the said debtor shall be liable to levy and sale under execution in satisfaction of such debt; *provided*, that no property of such debtor sold, *bona fide*, before the filing of such petition shall be subject to the lien of such judgment; *and provided further*, that notice of the filing of such petition shall be made by filing a notice thereof in the recorder's office of the county where such property may be situated, and that said judgment shall be revived

Judgment to be revived; petition for the purpose.

in the name of the original plaintiff, or plaintiffs, for the use of said petitioner, the party in interest. All sales ordered by the court shall be conducted in the same manner as sales upon execution.

CHAPTER XVIII.

Proceedings Supplementary to the Execution.

SECTION 259. Debtor required to answer concerning his property.
260. Proceedings to compel debtor to appear; in what cases he may be arrested; what bail may be given.
261. Any debtor may satisfy execution.
262. Examination of debtor and other persons.
263. Witness required to testify.
264. Property applied on execution.
265. Proceedings upon claim of another, or on denial of indebtedness.
266. Disobedience how punished.

Debtor required to answer concerning his property.

SEC. 259. When an execution against property of the judgment debtor, or of any one of several debtors in the same judgment issued to the sheriff of the county where he resides, or, if he do not reside in this Territory, to the sheriff of the county where the judgment roll is filed, is returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return is made, is entitled to an order from the judge of the court, or a probate judge, requiring such judgment debtor to appear and answer concerning his property before such judge, or a referee appointed by him, at a time and place specified in the order; but no judgment debtor must be required to attend before a judge or referee out of the county in which he resides.

Proceedings to compel debtor to appear.

SEC. 260. After the issuing of an execution against property, and upon proof by affidavit of a party, or otherwise, to the satisfaction of the court, or of a judge thereof, or a probate judge, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear at a specified time and place before such judge, or a referee appointed by him, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor, the judge

In what cases he may be arrested.

may, upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the sheriff to arrest the debtor and bring him before such judge. Upon being brought before the judge, he may be ordered to enter into an undertaking, with sufficient security, that he will attend, from time to time, before the judge, or referee, as shall be directed during the pendency of proceedings, and until the final determination thereof, and will not in the meantime dispose of any portion of the property not exempt from execution. In default of entering into such undertaking, he may be committed to prison.

What bail may be given.

Sec. 261. After the issuing of an execution against property, and before its return, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid.

Any debtor may satisfy execution.

Sec. 262. After the issuing or return of an execution against property of a judgment debtor, or of any one of several debtors in the same judgment, or upon proof by affidavit, or otherwise, to the satisfaction of the judge, that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars, the judge may, by an order, require such person or corporation, or any officer or member thereof, to appear, at a specified time and place, before him, or a referee appointed by him, and answer concerning the same.

Examination of debtor and other persons.

Sec. 263. Witnesses may be required to appear and testify before the judge, or referee, upon any proceedings under this act in the same manner as upon the trial of an issue.

Witness required to testify.

Sec. 264. The judge or referee may order any property of the judgment debtor not exempt from execution in the hands of such debtor, or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment.

Property applied on execution.

Sec. 265. If it appears that a person or corporation alleged to have property of the judgment debtor, or to be indebted to him, claims an interest in the property adverse to him, or denies the debt, the court or judge may authorize, by an order made to that effect, the judgment creditor to institute a suit against such person or corporation for the recovery of such interest or debt; and the court or judge may, by order, forbid a transfer or other disposition of such interest or debt until an action can be commenced and prosecuted to judgment. Such

Proceedings upon claims of another, or on denial of indebtedness.

order may be modified or vacated by a judge granting the same, or the court in which the action is brought, at any time, upon such terms as may be just.

Disobedience, how punished.

SEC. 266. If any person, party or witness disobey an order of the referee, properly made, in the proceedings before him under this act, he may be punished by the court or judge ordering the reference, for a contempt.

CHAPTER XIX.

Action for the Foreclosure of Mortgages.

SECTION 267. Proceedings in foreclosure suits.
268. Surplus money.
269. Proceedings when debt secured falls due at different times.
270. Nuisance defined and actions for.
271. Waste, actions for.
272. Trespass for cutting or carrying away trees; actions for.
273. Measure of damages.
274. Damages in forcible entry, etc.
275. Actions to quiet title.
276. When plaintiff cannot recover costs.
277. Title terminating; what the verdict and judgment.
278. Value of improvements allowed as a set off.
279. Order to survey and measure the land in dispute.
280. Order, what to contain and how served.
281. Mortgage not a conveyance.
282. Injunction during foreclosure.
283. Damages for injury to the possession.
284. Action not prejudiced by alienation.
285. Mining claims, local rules govern.

Proceedings in foreclosure.

SEC. 267. There can be but one action for the recovery of any debt, or the enforcement of any right secured by mortgage upon real estate or personal property, which action must be in accordance with the provisions of this act. In such action the court may, by its judgment, direct a sale of the encumbered property, or so much thereof as may be necessary, and the application of the proceeds of the sale to the payment of the costs of the court and the expenses of the sale, and the amount due to the plaintiff; and if it appear from the sheriff's return that the proceeds are insufficient, and a balance still remains due, judgment can then be docketed for such balance against the defendant or defendants personally for the debt, and it becomes a lien on the real estate of such judgment debtor, as in other cases on which execution may be issued. No person holding a conveyance from or under the mortgagor of the property mortgaged, or having a lien thereon, which conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, need be made a party to such action; and the judgment therein rendered and the proceedings therein had are as conclusive against the party holding such unrecorded conveyance or lien as if he had been made a party to the action.

Surplus money. SEC. 268. If there be surplus money remaining after payment of the amount due on the mortgage, lien, or encumbrance, with costs, the court may cause the same to be paid to the person entitled to it, and in the meantime may direct it to be deposited in court.

When debt secured. SEC. 269. If the debt for which the mortgage, lien or encumbrance is held be not all due, so soon as sufficient of the property has been sold to pay the amount due, with cost, the sale shall cease; and afterwards, as often as more becomes due for principal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

Actions for Nuisance, Waste and Wilful Trespass in Certain Cases on Real Property.

Nuisance defined and actions for. SEC. 270. Anything that is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance and the subject of an action. Such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance; and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

Waste, actions for. SEC. 271. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages.

Trespass, actions for. SEC. 272. Any person who shall cut down or carry off any wood or underwood, tree or timber, or girdle or otherwise injure any tree or timber on the land of another person, or on the street or highway in front of any person's house, village or city lot, or cultivated grounds, or on the commons, or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, shall be liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor in a civil action in any court having jurisdiction.

Measure of damages.

SEC. 273. Nothing in the last section shall authorize the recovery of more than the just value of timber taken from uncultivated wood land for the repair of the public highway or bridges upon the land or adjoining it.

Damages in forcible entry, etc.

SEC. 274. If a person recover damages for a forcible or unlawful entry in or upon, or detention of, any building, or any cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

Actions to Determine Conflicting Claims to Real Property, and Other Provisions relating to Actions Concerning Real Estate.

Action to quiet title.

SEC. 275. An action may be brought by any person against another who claims an estate or interest in real property adverse to him for the purpose of determining such adverse claim.

When plaintiff cannot recover costs.

SEC. 276. If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff shall not recover costs.

Title terminating; what the verdict and judgment.

SEC. 277. In an action for the recovery of real property, when the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment shall be according to the fact, and the plaintiff may recover damages for withholding the property.

Value of improvements allowed as a set-off.

SEC. 278. When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims holding under color of title, adversely to the claims of the plaintiff, in good faith, the value of such improvements shall be allowed as a set-off against such damages.

Order to survey and measure the land in dispute.

SEC. 279. The court in which an action is pending for the recovery of real property, or for damages for an injury thereto, may, on motion, upon notice, by either party, for good cause shown, grant an order allowing to such party the right to enter upon the property, and make survey and measurement thereof, and of any tunnels, shafts or drifts thereon, for the purpose of the action, even though entry for such purpose has to be made through other lands belonging to parties to the action.

Order what to contain and how served.

SEC. 280. The order shall describe the property, and a copy thereof shall be served on the owner or occupant; and thereupon such party may enter upon the property, with necessary surveyors and assistants, and make such survey and measurements; but if any unnecessary injury be done to the property, he shall be liable therefor.

Mortgage not a conveyance.

SEC. 281. A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale.

Injunction during foreclosure, etc.

SEC. 282. The court may, by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon, or after a sale on execution, before a conveyance.

Damages for injury to the possession.

SEC. 283. When real property shall have been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession after sale and before possession is delivered under the conveyance.

Action not prejudiced by alienation.

SEC. 284. An action for the recovery of real property against a person in possession cannot be prejudiced by an alienation made by such person, either before or after the commencement of the action.

Mining claims, local rules govern.

SEC. 285. In actions respecting mining claims proof must be admitted of the customs, usages or regulations established and in force at the bar, diggings, or in the district embracing such claims; and such customs, usages and regulations, when not in conflict with the laws of this Territory, must govern the decision of the action.

CHAPTER XX.

Actions for Partition of Real Property.

SECTION 286. Who may bring actions for partition.
287. Interest of all parties must be set forth.
288. Lien-holders who are not made parties.
289. Plaintiff must file notice of *lis pendens.*
290. Persons interested to be summoned.
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SECTION 296. Lien-holders notified to appear before referee.
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300. Court may set aside or affirm report; upon whom judgment to be conclusive.
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305. Application of proceeds.
306. Other securities may first be required to be exhausted.
307. Proceeds of sale, disposition of.
308. When the cause may be continued for the determination of claims.
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310. Terms of sale directed by the court.
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312. Tenants, compensation for their estate.
313. Court may fix such compensation.
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315. Future, contingent, or vested interest protected.
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318. Referees must report sale to the court.
319. If confirmed, conveyances may be executed.
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321. Conveyances recorded will be a bar against parties.
322. Proceeds of sale to be invested.
323. Investment made in recorder's name.
324. Securities taken in the names of parties in interest.
325. Duty of recorder making investments.
326. Partition; unequal compensation adjudged.
327. Share of infant paid to guardian.
328. Guardian of insane person to receive proceeds.
329. Guardian may consent to partition without action.
330. Costs, a lien upon the shares of the parties.
331. Single referees may be appointed.
332. Abstract of title.

Who may bring actions for partition.

SEC. 286. When several co-tenants hold and are in possession of real property, parceners, or joint tenants in common, in which one or more of them have an estate of inheritance, or for life or lives, or for years, an action may be brought by one or more such persons for a partition thereof, according to the respective rights of the persons interested therein; and for a sale of such property, or a part of it, if it appear that a partition cannot be made without great prejudice to the owners.

Interest of all parties must be set forth.

SEC. 287. The interests of all persons in the property, whether such persons be known or unknown, shall be set forth in the complaint, specifically and particularly, as far as known to the plaintiff; and if one or more of the parties, or the share or quantity of interest of any of the parties, be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint.

Lien-holders who are not made parties.

SEC. 288. No persons who have or claim any liens upon the property, by mortgage, judgment, or otherwise, need be made parties to the action, unless such liens be matters of record.

Notice of *lis pendens*.

SEC. 289. Immediately after filing the complaint the plaintiff shall record in the office of the recorder of the county, or of the several counties, in which the property is situated a notice of the pendency of the action, containing the names of the parties, so far as known, the object of the action, and a description of the property to be affected thereby. From the time of the filing it shall be deemed notice to all persons.

Persons interested to be summoned.

SEC. 290. The summons shall be directed to all the joint tenants and tenants in common, and all persons having any interest in or any liens of record, by mortgage, judgment, or otherwise, upon the property, or upon any particular portion thereof, and generally to all persons unknown who have or claim any interest in the property.

Unknown parties may be served by publication.

SEC. 291. If a party having a share or interest is unknown, or any one of the known parties reside out of the Territory or cannot be found therein, and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party by publication, as in other cases. When publication is made, the summons as published shall be accompanied by a brief description of the property which is the subject of the action.

Answer of defendants what to contain.

SEC. 292. The defendants who have been personally served with the summons and a certified copy of the complaint, or who have appeared without such service, shall set forth in their answers, fully and particularly, the origin, nature and extent of their respective interests in the property; and if such defendants claim a lien upon the property, by mortgage, judgment or otherwise, they shall state the original amount and date of the same, and the amount remaining due thereon, and whether the amount has been secured in any way or not, and, if secured, the extent and nature of the security, or they shall be deemed to have waived their right to such lien.

Rights of parties ascertained in the action.

SEC. 293. The rights of several parties, plaintiff as well as defendants, may be put in issue, tried and determined in such action; and when a sale of the premises is necessary, the title shall be ascertained by proof to the satisfaction of the court before the judgment of sale shall be made; and when service of the complaint has been made by publication, like proof shall be required of the right of the absent or unknown parties before such judgment is rendered, except that, where there are several unknown persons having an interest in the property, their rights may be considered together in the action, and as between themselves.

Partial partition.

SEC. 294. Whenever from any cause it is, in the opinion of the court, impracticable or highly inconvenient to make a complete partition, in the first instance, among all the parties in interest, it shall be lawful for the court to first ascertain and determine the share or interest respectively held by the original co-tenants, and thereupon to adjudge and cause a partition to be made as if such original co-tenants were the parties, and sole parties in interest, and the only parties to the action, and thereafter to proceed in like manner to adjudge and make partition separately of each share, or portion so ascertained and allotted, as between those claiming under the original tenant, to whom the same shall have been so set apart, or allow them to remain tenants in common thereof, as they may desire.

Lien-holders made parties, or their rights ascertained by referee.

SEC. 295. If it appear to the court, by the certificate of the county recorder, or by the sworn or verified statement of any person who may have examined and searched the records, that there are outstanding liens or encumbrances of record upon such real property, or any part or portion thereof, which existed and were of record at the time of the commencement of the action, and the persons holding such liens are not made parties to the action, the court must either order such persons to be made parties to the action, by an amendment or supplemental complaint, or appoint a referee to ascertain whether or not such liens or encumbrances have been paid, or, if not paid, what amount remains due thereon, and their order among the liens or encumbrances severally held by such persons and the parties to the action, and whether the amount remaining due thereon has been secured in any manner, and, if secured, the nature and extent of the security.

Lien-holders notified to appear before referee.

SEC. 296. The plaintiff shall cause a notice to be served, a reasonable time previous to the day for appearance before the referee appointed, as provided in the last section, on each person having outstanding liens of record who is not a party to the record, and is not a party to the action, to appear before the referee at a specified time and place, to make proof by his own affidavit or otherwise of the true amount due, or to become due, contingently or absolutely, thereon. In case such person be absent, or his residence be unknown, service may be made by publication, or notice to his agent, under the direction of the court, in such manner as may be proper. The report of the referee thereon shall be made to the court, and shall be confirmed, modified or set aside, and a new reference ordered, as the justice of the case may require.

Sale; partition; referee

SEC. 297. If it be alleged in the complaint and established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property, or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof. Otherwise, upon the requisite proofs being made, it shall order a partition, according to the respective rights of the parties, as ascertained by the court, and appoint referees therefor; and shall designate the portion to remain undivided for the owners whose interests remain unknown or are not ascertained.

Partition made according to the rights of the parties.

SEC. 298. In making the partition the referee shall divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties, pursuant to the provisions of this act, designating the several portions by proper land marks, and may employ a surveyor, with the necessary assistants, to aid therein.

Report of referees.

SEC. 299. The referees shall make a report of their proceedings, specifying therein the manner of executing their trust, describing the property divided, and the shares allotted to each party, with a particular description of each share.

Court may set aside or affirm report.

SEC. 300. The court may confirm, change, modify or set aside the report, and, if necessary, appoint new referees. Upon the report being confirmed, judgment shall be rendered that such partition be effectual forever, which judgment shall be binding and conclusive—*First*, on all persons named as parties to the action and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life, or for years; or as entitled to the reversion, remainder, or the inheritance of such property, or any part thereof, after the termination of a particular estate therein, and who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof, as tenants for years or for life; *second*, on all persons interested in the property who may be unknown to whom

Upon whom judgment to be conclusive.

notice shall have been given of the action for partition by publication; and, *third*, on all other persons claiming from such parties or persons, or either of them. And no judgment is invalidated by reason of the death of any party before final judgment or decree, but such judgment or decree is as conclusive against the heirs, legal representatives or assigns of such decedent as if it had been entered before his death.

Tenants for less than ten years not affected.

SEC. 301. But such judgment and partition shall not affect tenants for years less than ten to the whole of the property which is the subject of the partition.

Expenses of partition apportioned

SEC. 302. The expenses of the referees, including those of a surveyor and his assistants, when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by the court to the referees, shall be apportioned among the different parties to the action equitably.

Lien, charge, etc.

SEC. 303. When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall thenceforth be a charge only on the share assigned to such party; but such share shall be first charged with its just proportion of the costs of the partition in preference to such lien.

Estate for life, etc., may be set apart.

SEC. 304. When a part of the property only is ordered to be sold, if there be an estate for life or years in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

Application of proceeds.

SEC. 305. The proceeds of the sale of the encumbered property shall be applied, under the direction of the court, as follows: *First.* To pay its just proportion of the general costs of the action. *Second.* To pay the cost of the reference. *Third.* To satisfy and cancel of record the several liens, in their order of priority, by payment of the sums due and to become due, the amount due to be verified by affidavit at the time of payment. *Fourth.* The residue among the owners of the property sold, according to their respective shares therein.

Other securities may first be required to be exhausted.

SEC. 306. Whenever any party to an action who holds a lien upon the property, or any part thereof, has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property, on account thereof.

Proceeds of sale, disposition of.

SEC. 307. The proceeds of sale and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto whenever the court so directs. But in case no direction be given, all such proceeds and securities shall be paid into court, or deposited therein, as directed by the court.

When the cause may be continued for the determination of claims.

SEC. 308. When the proceeds of sale of any share or parcel belonging to persons who are parties to the action, and who are known, are paid into court, the action may be continued, as between such parties, for the determination of their respective claims thereto, which shall be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee, at the discretion of the court, and the court may, if necessary, requre such parties to present the facts or law in controversy, by pleadings, as in an original action.

Sales by referees must be at auction.

SEC. 309. All sales of real property made by referees under this chapter shall be made by public auction to the highest bidder, upon notice published in the manner required for the sale of real property on execution. The notice shall state the terms of sale, and, if the property, or any part of it, is to be sold, subject to a prior estate, charge or lien, that shall be stated in the notice.

Terms of sale directed by the court.

SEC. 310. The court shall, in the order for sale, direct the terms of credit which may be allowed for the purchase-money of any portion of the premises of which it may direct a sale or credit, and for that portion of which the purchase-money is required by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants, or parties out of the Territory.

Security for purchase-money may be taken.

SEC. 311. The referees may take separate mortgages and other securities for the whole or convenient portion of the purchase-money of such parts of the property as are directed by the court to be sold on credit for the shares of any known owner, of full age, in the name of such owner; and for the shares of an infant, in the name of the guardian of such infant; and for other shares, in the name of the clerk of the court and his successors in office.

Tenants: compensation for their estate.

SEC. 312. The person entitled to a tenancy for life or years whose estate shall have been sold shall be entitled to receive such sum as may be deemed a reasonable satisfaction for such estate, and which the person so entitled may consent to accept instead thereof, by an instrument in writing, filed with the clerk of the court. Upon the filing of such consent, the clerk shall enter the same in the minutes of the court.

Court may fix such compensation.

SEC. 313. If such consent be not given, filed and entered, as provided in the last section, at or before a judgment of sale is rendered, the court shall ascertain and determine what portion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate, and shall order the same to be paid to such party or deposited in court for him, as the case may require.

Court must protect tenants unknown.

SEC. 314. If the person entitled to such estate for life or years be unknown, the court shall provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

Future, contingent, or vested interests protected.

SEC. 315. In all cases of sale, when it appears that any person has a vested or a contingent future right or estate in any of the property sold, the court shall ascertain and settle the proportional value of such contingent or vested right or estate, and shall direct such proportion of the proceeds of the sale to be invested, secured or paid over in such manner as to protect the rights and interests of the parties.

Terms; separate sale.

SEC. 316. In all cases of sales of property, the terms shall be made known at the time; and if the premises consist of distinct farms or lots, they shall be sold separately.

Who may not be purchasers.

SEC. 317. Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase, nor shall a guardian of an infant party be interested in the purchase of any real property being the subject of the action, except for the benefit of the infant. All sales contrary to the provisions of this section shall be void.

Referees must report sale to the court.

SEC. 318. After completing a sale of the property, or any part thereof, ordered to be sold, the referees shall report the same to the court, with a description of the different parcels of land sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and conditions of the sale, and the securities, if any, taken. The report shall be filed in the office of the recorder of the county where the property is situated.

If confirmed conveyances may be executed

SEC. 319. If the sale be confirmed by the court, an order shall be entered directing the referees to execute conveyances and take securities pursuant to such sale, which they are hereby authorized to do. Such order may also give directions to them respecting the disposition of the proceeds of the sale.

Lien-holder a purchaser.

SEC. 320. When a party entitled to a share of the property, or an encumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

Conveyances recorded will

SEC. 321. The conveyances shall be recorded in the county where the premises are situated, and shall be a bar against all persons interested in the property in any way who shall have been named as parties in the action, and against such parties and persons as were unknown, if the summons was served by publication, and against all persons claiming under them, or either of them, and against all persons having unrecorded deeds or liens at the commencement of the action.

be a bar against parties.

Proceeds of sale to be invested.

SEC. 322. When there are proceeds of a sale belonging to an unknown owner, or to a person without the Territory who has no legal representative within it, the same shall be invested in securities, or at interest, for the benefit of the person entitled thereto.

Investment made in recorder's name.

SEC. 323. When the security of the proceeds of sale is taken, or when an investment of any such proceeds is made, it shall be done (except as herein otherwise provided) in the name of the recorder of the county where the papers are filed, and his successors in office shall hold the same for the use and benefit of the parties interested, subject to the order of the court.

Securities taken in the names of parties in interest.

SEC. 324. When security is taken by the referees on a sale, and the parties interested in such security, by an instrument in writing, under their hands, delivered to the referees, agree upon the shares and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the court, such securities shall be taken in the name of, and payable to the parties respectively entitled thereto, and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the recorder.

Duty of recorder making investments.

SEC. 325. The recorder in whose name a security is taken, or by whom an instrument is made, and his successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same, as the court may direct; and must deposit with the county treasurer all securities taken, and keep an account, in a book provided for that purpose in the recorder's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

Partition unequal; compensation adjudged.

SEC. 326. When it appears that partition cannot be made equal between the parties, according to their respective rights, without prejudice to the rights and interests of some of them, and a partition be ordered, the court may adjudge compensation to be made by one party to another on account of the inequality; but such compensation shall not be required to be made to others by owners unknown, nor by infants, unless in case of an infant it appear that he has personal property sufficient for that purpose, and that his interest will be promoted thereby. And in all cases the court shall have power to make compensatory adjustment between the respective parties, according to the ordinary principles of equity.

Share of infant paid to guardian.

SEC. 327. When the share of an infant is sold, the proceeds of the sale may be paid by the referee making the sale to his general guardian, or the special guardian appointed by him in the action, upon giving the security required by law, or directed by order of the court.

Guardian of insane person to receive proceeds.

SEC. 328. The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive, in behalf of such person, his share of the proceeds of such real property from the referees, on executing, with sufficient sureties, an undertaking approved by a judge of the court, or by a probate judge, that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or his legal representative.

Guardian mayconsent to partition without action.

SEC. 329. The general guardian of an infant, and the guardian entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, who is interested in real estate held in joint tenancy, or in common, or in any other manner, so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without action, and agree upon the share to be set off to such infant, or other person entitled, and may execute a release in his behalf to the owners of the shares of the parts to which they may be respectively entitled, upon an order of the court.

Costs a lien upon the shares of the parties.

SEC. 330. The costs of partition, including reasonable counsel fees expended by the plaintiff for the common benefit, fees of referees, and other disbursements, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case they shall be a lien on the several shares, and the judgment may be enforced by execution against such shares, and against other property held by the respective parties. When, however, a litigation arises between some of the parties only, the court may require the expenses of such litigation to be paid by the parties thereto, or any of them.

Single referee may be appointed.

SEC. 331. The court, with the consent of the parties, may appoint a single referee, instead of three referees, in the proceedings under the provisions of this act; and the single referee, when thus appointed, shall have all the powers and perform all the duties required of the three referees.

Abstract of title.

SEC. 332. If it appears to the court that it was necessary to have made an abstract of the title to the property to be partitioned, and such abstract shall have been procured by the plaintiff, or if the plaintiff shall have failed to have the same made before the commencement of the action, and one of the defendants shall have had such abstract afterwards made, the cost of the abstract shall be taxed as costs in the action.

CHAPTER XXI.

Actions for the Usurpation of an Office or Franchise.

SECTION 333. Certain writs abolished.
334. Action for usurpation of an office or franchise.
335. Name of person entitled to office to be set forth.
336. Rights of each determined.
337. When judgment rendered in favor of applicant.
338. Damages may be recovered.
339. When several persons claim the office.
340. Defendant found guilty; the judgment.

Certain writs abolished.

SEC. 333. The writ of *scire facias*, the writ of *quo warranto*, and proceedings by information in the nature of *quo warranto*, are abolished. The remedies obtainable in these forms may hereafter be obtained by civil actions, under the provisions of this chapter.

Action for usurpation of an office or franchise

SEC. 334. An action may be brought by the District Attorney, in the name of the people of the United States and the Territory of Idaho, upon his own information, or upon the complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within this Territory. And it shall be the duty of the District Attorney to bring the action whenever he has reason to believe that any such office or franchise has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed to do so by the Governor.

Names of person entitled to office set forth

SEC. 335. Whenever such action is brought, the District Attorney, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightly entitled to the office, with a statement of his right thereto; and in such case, upon proof

Fees and arrest.

by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of his usurpation thereof, an order may be granted by a judge of the Supreme Court, or a District Judge, for the arrest of such defendant and holding him to bail, and thereupon he may be arrested and held to bail in the same manner, and with the same effect, and subject to the same rights and liabilities as in other civil actions where the defendant is subject to arrest.

Rights of each determined.

SEC. 336. In every such case judgment may be rendered upon the right of the defendant, and also upon the right of the party alleged to be entitled, or only upon the right of the defendant, as justice shall require.

When rendered in favor of applicant.

SEC. 337. If the judgment be rendered upon the right of the person alleged to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office and executing such official bond as may be required by law, to take upon himself the execution of the office.

Damages may be recovered.

SEC. 338. If the judgment be rendered upon the right of the person so alleged to be entitled in favor of such person, he may recover by action the damages which he shall have sustained by reason of the usurpation of the office by the defendant.

When several persons claim the office.

SEC. 339. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

Defendant found guilty; the judgment.

SEC. 340. When a defendant against whom such action has been brought is adjudged guilty of usurping, or intruding into, or unlawfully holding any office, franchise or privilege, judgment shall be rendered that such defendant shall be excluded from the office, franchise or privilege, and that he pay the costs of the action. The court may also, in its discretion, impose upon the defendant a fine not exceeding five thousands dollars, which fine, when collected, shall be paid into the treasury of the Territory.

CHAPTER XXII.

Practice and Proceedings in Justices' Courts.

SECTION 341. Action, in what precinct may be commenced.
342. Place of trial may be changed in certain cases.
343. Limitation on the right to change.
344. To what court transferred.

SECTION 345. Proceedings after order changing place of trial.
346. Effect of change.
347. Transfer of cases to the District Court.
348. Action how commenced.
349. Summons may issue within a year.
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PLACE OF TRIAL OF ACTIONS IN JUSTICES' COURTS.

Action, in what precinct may be commenced.

SEC. 341. Actions in justices' courts must be commenced, and, subject to the right to change the place of trial, as in this chapter provided, must be tried:

First—If there be no justices' court for the precinct or city in which the defendant resides, in any city or precinct of the county in which he resides.

Second—When two or more persons are jointly, or jointly and severally, bound in any debt or contract, or otherwise jointly liable in the same action, and reside in different precincts or different cities of the same county, or in different counties, in the precinct or city in which any of the persons liable may reside.

Third—In case of injury to the person or property, in the precinct or city where the injury was committed, or where the defendant resides.

Fourth—If for the recovery of personal property, or the value thereof, or damages for taking or detaining the same, in the precinct or city in which the property may be found, or in which the property was taken, or in which the defendant resides.

Fifth—When the defendant is a non-resident of the county, in any precinct or city wherein he may be found.

Sixth—When the defendant is a non-resident of the Territory, in any precinct or city in the Territory.

Seventh—When a person has contracted to perform an obligation at a particular place, and resides in another county, precinct or city, in the precinct or city in which such obligation is to be performed, or in which he resides.

Eighth—When the parties voluntarily appear, and plead without summons, in any precinct or city in the Territory.

Ninth—In all other cases, in the precinct or city in which the defendant resides.

Place of trial may be changed in certain cases.

SEC. 342. The court may, at any time before trial, on motion, change the place of trial in the following cases:

First—When it appears to the satisfaction of the justice before whom the action is pending, by affidavit of either party, that such justice is a material witness for either party.

Second—When either party makes and files an affidavit that he believes he cannot have a fair and impartial trial before such justice, by reason of the interest, prejudice or bias of the justice.

Third—When a jury has been demanded, and either party makes and files an affidavit that he cannot have a fair and impartial trial on account of the bias or prejudice of the citizens of the precinct or city against him.

Fourth—When, from any cause, the justice is disqualified from acting.

Fifth—When the justice is sick or unable to act.

Limitation on the right to change.

SEC. 343. The place of trial cannot be changed, on motion of the same party, more than once, upon any or all of the grounds specified in the first, second and third subdivisions of the preceding section.

To what court transferred.

SEC. 344. When the court orders the place of trial to be changed, the action must be transferred for trial to a court the parties may agree upon; and if they do not so agree, then to another justices' court in the same county.

Proceedings after order changing place of trial.

SEC. 345. After an order has been made transferring the action for trial to another court, the following proceedings must be had:

First—The justice ordering the transfer must immediately transmit to the justice of the court to which it is transferred, on payment by the party applying of all the costs that have accrued, all the papers in the action, together with a certified transcript from his docket of the proceedings therein.

Second—Upon the receipt by him of such papers, the justice of the court to which the case is transferred must issue a notice, stating when and where the trial will take place, which notice must be served upon the parties at least one day before the time fixed for trial.

Effect of change.

SEC. 346. From the time the order changing the place of trial is made the court to which the action is thereby transferred has the same jurisdiction over it as though it had been commenced in such court.

Transfer of cases to the district court.

SEC. 347. The parties shall not be at liberty to give evidence by which the question of title to real property shall be raised on the trial before a justice, and if it appear from the plaintiff's own showing on the trial, or from the answer of the defendant, verified by his oath, or that of his agent or attorney, that the determination of the action will necessarily involve the decision of a question of title to real property, the justice shall suspend all further proceedings in the action, and certify the pleadings, or, if the pleadings be oral, a transcript of the same from his docket, to the District Court of the county; and from the time of filing such pleadings or transcript with the clerk, the District Court shall have over the action the same jurisdiction as if it were originally commenced therein; *provided*, that when the pleadings or transcript are certified to the district court upon the answer of the defendant, he shall file an undertaking, with two or more sufficient sureties, to be approved by the justice, to the effect that they will pay the costs of the action if it be decided against him by the District Court.

MANNER OF COMMENCING ACTIONS IN JUTSICES' COURTS.

Action how commenced

SEC. 348. An action in a justices' court is commenced by filing a complaint and issuing a summons thereon, or by the voluntary appearance and pleading of the parties.

Summons may issue within a year.

SEC. 349. The court must endorse on the complaint the date upon which it was filed, and at any time within one year thereafter the plaintiff may have summons issued.

Waiver of summons.

SEC. 350. At any time after the complaint is filed the defendant may, in writing, or by appearing and pleading, waive the issuing of summons.

Appear in person or by attorney.

SEC. 351. Parties in justices' courts may appear and act in person, or by attorney, and any person, except the constable by whom the summons or jury process was served, may act as attorney.

Infant to appear by guardian.

SEC. 352. When an infant is a party, he must appear either by his general guardian, if he have one, or by a guardian appointed by the justice, as follows:

First—If the infant be plaintiff, the appointment must be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years; if under that age, upon the application of a relative or friend.

Second—If the infant be defendant, the guardian must be appointed at the time the summons is returned or before the answer. It is the right of the infant to nominate his own guardian if the infant be over fourteen years of age; otherwise, the justice must make the appointment.

Summons. SEC. 353. The summons must be directed to the defendant and signed by the justice, and must contain:

First—The title of the court, name of the county and precinct or city in which the action is commenced, and the names of the parties thereto.

Second—A sufficient statement of the cause of action, in general terms, to apprise the defendant of the nature of the claim against him.

Third—A direction that the defendant appear and answer before the justice at his office at a time specified in the summons.

Fourth—In an action arising on a contract for the recovery of money or damages only, a notice that, unless the defendant so appears and answers, the plaintiff will take judgment for the sum claimed by him (stating it).

Fifth—In other actions, a notice that, unless defendant so appears and answers, the plaintiff will apply to the court for the relief demanded. If the plainitff has appeared by attorney, the name of the attorney must be endorsed on the summons.

SEC. 354. The time specified in the summons for the appearance of the defendant must be as follows:

Time for appearance of defendant. *First*—If an order of arrest is endorsed on the summons, forthwith.

Second—In all other cases, not less than three days nor more than ten days from its date.

Alias summons. SEC. 355. If the summons is returned without being served upon any or all of the defendants, upon notice and demand of the plaintiff, an alias summons may be issued in the same form as the original, except that he may fix the time for the appearance of the defendant at a period not to exceed ninety days from its date.

Same. SEC. 356. The justice may, within a year from the date of the filing of the complaint, issue as many alias summons as may be demanded by the plaintiff.

Summons, limitation on service of. SEC. 357. The summons cannot be served out of the county of the justice before whom the action is brought, except where the action is brought on a joint obligation or contract of two or more persons who reside in different counties, and the summons has been served upon the defendant resident of the county, in which case the summons may be served upon the other defendants out of the county, and except also when an action is brought against a party who has contracted to perform an obligation at a particular place, and resides in a different county, in which case summons may be served in the county where he resides. When the defendant resides in the county, the summons cannot be served within two days of the time fixed for the appearance of the defendant. When he resides out of the county, and the summons is served out of the county, the summons cannot be served within thirty days of such time.

Summons by whom and how served.

SEC. 358. The summons may be served by a sheriff or constable of the county, or by any male resident of the county over twenty-one years of age, and must be served and returned as prescribed in sections twenty-eight and twenty-nine of this act; or it may be served by publication, and sections thirty and thirty-one, so far as they relate to the publication of summons, are made applicable to justices' courts, the word "justice" being substituted for the word "judge" wherever the latter word occurs.

Hour for appearance.

SEC. 359. The parties are entitled to one hour in which to appear after the time fixed in the summons, but are not bound to remain longer than that time, unless both parties have appeared, and the justice being present is engaged in the trial of another cause.

PLEADINGS IN JUSTICES' COURTS.

Form of pleadings.

SEC. 360. Pleadings in justices' courts:

First—Are not required to be in any particular form, but must be such as to enable a person of common understanding to know what is intended.

Second—May, except the complaint, be oral or in writing.

Third—Must not be verified, unless otherwise provided in this act.

Fourth—If in writing, must be filed with the justice.

Fifth—If oral, an entry of their substance must be made in the docket.

Pleadings.

SEC. 361. The pleadings are:

First—The complaint by the plaintiff.

Second—The demurrer to the complaint.

Third—The answer by the defendant.

Fourth—The demurrer to the answer.

Complaint defined.

SEC. 362. The complaint in justices' courts is a concise statement, in writing, of the facts constituting the plaintiff's cause of action, or a copy of the account, note, bill, bond, or instrument on which the action is based.

Demurrer.

SEC. 363. The defendant may, at any time before answering, demur to the complaint.

Answer.

SEC. 364. The answer may contain a denial of any or all of the material facts stated in the complaint which the defendant believes to be untrue, and also a statement, in a plain and direct manner, of any other facts constituting a defense or counter-claim upon which an action might be brought by the defendant against the plaintiff in a justices' court.

Omission of counter-claim.

SEC. 365. If the defendant omit to set up a counter-claim in the cases mentioned in the last section, neither he nor his assignee can afterwards maintain an action against the plaintiff therefor.

When plaintiff may demur to answer.

SEC. 366. When the answer contains new matter in avoidance, or constituting a defense or counter-claim, the plaintiff may, at any time before the trial, demur to the same for insufficiency, stating therein the grounds of such demurrer.

Proceedings on demurrer.

SEC. 367. The proceedings on demurrer are as follows:

First—If the demurrer to the complaint is sustained, the plaintiff may, within such time (not exceeding two days) as the court allows, amend his complaint.

Second—If the demurrer to the complaint is overruled, the defendant may answer forthwith.

Third—If the demurrer to an answer is sustained, the defendant may amend his answer within such time (not exceeding two days) as the court may allow.

Fourth—If the demurrer to an answer be overruled, the action must proceed as if no demurrer had been interposed.

Amendment of pleadings.

SEC. 368. Either party may, at any time before the conclusion of the trial, amend any pleading; but if the amendment is made after issue joined, and it appears to the satisfaction of the court, by oath, that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment must be granted. The court may also, in its discretion, when an adjournment will by the amendment be rendered necessary, require, as a condition to the allowance of such amendment made after issue joined, the payment of costs to the adverse party, to be fixed by the court, not exceeding twenty dollars. The court may also, on such terms as may be just, and on payment of costs, relieve a party from a judgment by default taken against him by his mistake, inadvertence, surprise or excusable neglect; but the application for such relief must be made within ten days after the entry of the judgment and upon an affidavit showing good cause therefor.

Answer or demurrer to amended pleadings.

SEC. 369. When a pleading is amended, the adverse party may answer or demur to it within such time (not exceeding two days) as the court may allow.

CHAPTER XXIII.

Provisional Remedies in Justices' Courts.

SECTION 370. Order of arrest and arrest of defendant.
371. Affidavit and undertaking for order of arrest.
372. Defendant arrested; proceedings.
373. Officer must give notice of arrest.
374. Defendant detained.
375. Writ of attachment.
376. Undertaking on attachment.
377. The writ of attachment.
378. Certain sections applicable.
379. Same.

ARREST AND BAIL.

Order of arrest and arrest of defendant.

SEC. 370. An order to arrest the defendant may be endorsed on a summons issued by the justice, and the defendant may be arrested thereon by the sheriff or constable at the time of serving the summons, and brought before the justice, and there detained until duly discharged, in the following cases:

First—In an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the Territory with intent to defraud his creditors.

Second—In an action for a fine or penalty, or for money or property embezzled or fraudulently misapplied or converted to his own use, by one who received it in a fiduciary capacity.

Third—When the defendant has been guilty of fraud in contracting the debt or increasing the obligation for which the action is brought.

Fourth—When the defendant has removed, concealed or disposed of his property, or is about to do so, with intent to defraud his creditors.

But no female can be arrested in any action. When the debtor is in another county than that in which the writ of arrest was issued, he may be arrested in that county upon the written direction of a magistrate of that county indorsed upon the warrant, signed by him with his name and office, and dated at the county, city or town where it is made, to the following effect: "This warrant may be executed in the county of ——;" or as the case may be.

Affidavit and undertaking for order of arrest.

SEC. 371. Before an order of arrest can be made, the party applying must prove to the satisfaction of the justice, by the affidavit of himself or some other person, the facts upon which the application is founded. The plaintiff must also execute and deliver to the justice a written undertaking, in the sum of one hundred dollars, with sufficient sureties, to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the same be wrongful or without sufficient cause, not exceeding the sum specified in the undertaking.

Defendant arrested.

SEC. 372. The defendant, immediately upon being arrested, must be taken to the office of the justice who made the order, and, if he is absent or unable to try the action, or if it appears to him by the affidavit of the defendant that he is a material witness in the action, the officer must immediately take the defendant before another justice within the county, who must take jurisdiction of the action, and proceed thereon as if the summons had been issued and the order of arrest made by him.

Officer must give notice of arrest.

SEC. 373. The officer making the arrest must immediately give notice thereof to the plaintiff, or his attorney or agent, and indorse on the summons and subscribe a certificate stating the time of serving the same, the time of the arrest, and of his giving notice to the plaintiff.

Defendant detained.

SEC. 374. The officer making the arrest must keep the defendant in custody until he is discharged by order of the justice.

ATTACHMENT.

Writ of attachment.

SEC. 375. A writ to attach the property of the defendant must be issued by the justice at the time of or after issuing the summons and before answer, on receiving an affidavit by or on behalf of the plaintiff, showing the same facts as are required to be shown by the affidavit in cases of attachment in the district court.

SEC. 376. Before issuing the writ the justice must require a written undertaking on the part of the plaintiff, with two or more sufficient sureties, in a sum not less than one hundred dollars, to the effect that, if the defendant recover judgment, or if the attachment be dismissed, the plaintiff will pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking. Undertaking on attachment.

SEC. 377. The writ may be directed to the sheriff or any constable of the county or the sheriff of any other county, and must require him to attach and safely keep all the property of the defendant within his county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint, unless the defendant give him security, by the undertaking of two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs; in which case to take such undertaking. The writ of attachment.

SEC. 378. The sections of this act from section one hundred and twenty-four to section one hundred and forty-one, both inclusive, shall be applicable to attachments in justices' courts, the word "constable," when directed to a constable, being substituted for the word "sheriff," and the word "justice" being substituted for the word "judge." Certain sections applicable.

CLAIM AND DELIVERY OF PERSONAL PROPERTY.

SEC. 379. In an action to recover possession of personal property, the plaintiff may, at the time of issuing summons, or at any time thereafter before answer, claim the delivery of such property to him, and the sections of this act from section ninety-nine to section one hundred and ten, both inclusive, are applicable to such claim when made in justices' courts, the powers therein given and the duties imposed on sheriffs being extended to constables, and the word "justice" substituted for "judge." Certain sections applicable.

CHAPTER XXIV.

Judgment by Default in Justices' Courts.

SECTION 380. Judgment by default.
381. Judgment on demurrer.
382. Time when trial must be commenced.

SECTION 383. When court may, of its own motion, postpone the trial.
384. Postponement by consent.
385. Postponement upon application of a party.
386. No continuance for more than ten days.
387. Issues defined—two kinds.
388. Issue of law, how raised.
389. Issue of fact, how raised.
390. Issue of law, how tried.
391. Issue of fact, how tried.
392. Jury, how waived.
393. Party failing to appear.
394. Challenges to jurors.
395. Inspection of written instrument.
396. Copy of instrument filed; when signatures deemed admitted.

Judgment by default.

SEC. 380. When the defendant fails to appear and answer or demur at the time specified in the summons, or within one hour thereafter, then, upon proof of service of the summons, the following proceedings must be had:

First—If the action is based on a contract, and is for the recovery of money or damages only, the court must render judgment in favor of plaintiff for the sum specified in the summons.

Second—In all other actions the court must hear the evidence offered by the plaintiff, and must render judgment in his favor for such a sum (not exceeding the amount stated in the summons) as appears by such evidence to be just.

Judgment on demurrer.

SEC. 381. In the following cases the same proceedings must be had, and judgment must be rendered in like manner as if the defendant had failed to appear and answer or demur:

First—If the complaint has been amended, and the defendant fail to answer it as amended within the time allowed by the court.

Second—If the demurrer to the complaint is overruled, and the defendant fails to answer at once.

Third—If the demurrer to the answer is sustained, and the defendant fails to amend the answer within the time allowed by the court.

Time of Trial and Postponements in Justices' Courts.

Time when trial must be commenced.

SEC. 382. Unless postponed, as provided in this act, or unless transferred to another court, the trial of the action must commence at the expiration of one hour from the time specified in the summons for the appearance of defendant, and the trial must be continued without adjournment for more than twenty-four hours at any one time, until all the issues therein are disposed of.

When court may, of its own motion, postpone trial.

SEC. 383. The court may, of its own motion, postpone the trial:

First—For not exceeding one day, if, at the time fixed by law or by an order of the court for the trial, the court is engaged in the trial of another action.

Second—For not exceeding two days, if, by an amendment of the pleadings, or the allowance of time to make such amendment or to plead, a postponement is rendered necessary.

Third—For not exceeding three days, if the trial is upon issues of fact, and a jury have been demanded.

Postponement by consent.

SEC. 384. The court may, by consent of the parties, given in writing or in open court, postpone the trial to a time agreed upon by the parties.

Postponement upon application of a party.

SEC. 385. The trial may be postponed upon the application of either party for a period not exceeding four months:

First—The party making the application must prove, by his own oath or otherwise, that he cannot, for want of material testimony, which he expects to procure, safely proceed to trial, and must show in what respect the testimony expected is material, and that he has used due diligence to procure it, and has been unable to do so.

Second—If the application is on the part of the plaintiff, and the defendant is under arrest, a postponement for more than three hours discharges the defendant from custody; but the action may proceed notwithstanding, and the defendant is subject to arrest on execution in the same manner as if he had not been discharged.

Third—If the application is on the part of a defendant under arrest, before it can be granted he must execute an undertaking, with two or more sufficient sureties, to be approved by and in a sum to be fixed by the justice, to the effect that he will render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment therein, or that the sureties will pay to the plaintiff the amount of any judgment which he may recover in the action, not exceeding the amount specified in the undertaking. On filing the undertaking specified in this subdivision, the justice must order the defendant to be discharged from custody.

Fourth—The party making the application must, if required by the adverse party, consent that the testimony of any witness of such adverse party who is in attendance may be then taken by deposition before the justice, and that the testimony so taken may be read on the trial with the same effect and subject to the same objections as if the witness was produced. But the court may require the party making the application to state, upon affidavit, the evidence which he expects to obtain; and if the adverse party thereupon admits that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial must not be postponed.

No continuance for more than ten days.

SEC. 386. No adjournment must, unless by consent, be granted for a period longer than ten days, upon the application of either party, except upon condition that such party file an undertaking, in an amount fixed by the justice, with two sureties, to be approved by the justice, to the effect that they will pay to the opposite party the amount of any judgment which may be recovered against the party applying, not exceeding the sum specified in the undertaking.

Trials in Justices' Courts.

Issue defined—two kinds.

SEC. 387. Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party and controverted by the other. They are of two kinds: *First*, of law; and, *second*, of fact.

Issue of law.

SEC. 388. An issue of law arises upon a demurrer to the complaint or answer, or to some part thereof.

Issue of fact.

SEC. 389. An issue of fact arises—*First*, upon a material allegation in the complaint controverted in the answer; and, *second*, upon new matter in the answer, except an issue of law is joined thereon.

Issue of law how tried.

SEC. 390. An issue of law must be tried by the court.

Of fact how tried.

SEC. 391. An issue of fact must be tried by a jury, unless a jury is waived, in which case it must be tried by the court.

Jury how waived.

SEC. 392. A jury may be waived—*First*, by consent of parties entered in the docket; *second*, by a failure of either party to demand a jury before the commencement of the trial of an issue of fact; *third*, by the failure of either party to appear at the time fixed for the trial of an issue of fact.

Party failing to appear.

SEC. 393. If either party fails to appear at the time fixed for trial, the trial may proceed at the request of the adverse party.

Challenges to jurors.

SEC. 394. The challenges are either peremptory or for cause. Each party is entitled to three peremptory challenges. Either party may challenge for cause on any grounds set forth in section one hundred and sixty-eight. Challenges for cause must be tried by the justice.

Inspection of written instrument.

SEC. 395. When the cause of action or counterclaim arises upon an account or instrument for the payment of money only, the court, at any time before the trial, may, by an order under his hand, require the original to be exhibited to the inspection of, and a copy to be furnished to the adverse party, at such time as may be fixed in the order; or, if such order is not obeyed, the account or instrument cannot be given in evidence.

Copy of the instrument filed; when signatures deemed admitted.

SEC. 396. If the plaintiff annex to his complaint, or file with the justice at the time of issuing the summons, the original or a copy of the promissory note, bill of exchange, or other written obligation for the payment of money, upon which the action is brought, the defendant is deemed to admit the genuineness of the signatures, endorsers, or assignors thereof, unless he specifically deny the same in his answer, and verify the answer by his oath.

CHAPTER XXV.

Judgments Other than by Default in Justices' Courts.

SECTION 397. Judgment by confession.
398. Judgment of dismissal entered in certain cases.
399. Judgment upon verdict.
400. Judgment after trial by the court.
401. Judgment how entered.
402. Excess beyond jurisdiction may be remitted.
403. Offer to compromise before trial.
404. Costs included in the judgment.
405. Abstract of judgment.
406. Abstract of judgment when filed.
407. Effect of docketing judgment.
408. Judgment not a lien unless abstract is recorded.

Judgment by confession.

SEC. 397. Judgments upon confession may be entered in any justices' courts specified in the confession in any amount of which said courts have jurisdiction.

Judgment of dismissal entered in certain cases.

SEC. 398. Judgment that the action be dismissed, without prejudice to a new action, may be entered, with costs, in the following cases:

First—When the plaintiff voluntarily dismisses the action before it is finally submitted.

Second—When he fails to appear at the time specified in the summons, or at the time to which the action has been postponed, or within one hour thereafter.

Third—When, after a demurrer to the complaint has been sustained, the plaintiff fails to amend it within the time allowed by the court.

Fourth—When it is objected at the trial, and appears by the evidence that the action is brought in the wrong county, or precinct, or city; but if the objection is taken and overruled, it is cause only of reversal on appeal, and does not otherwise invalidate the judgment; if not taken at the trial, it is waived.

Judgment upon verdict.

SEC. 399. When a trial by jury has been had, judgment must be entered by the justice at once in conformity with the verdict.

Judgment after trial by the court.

SEC. 400. When the trial is by the court, judgment must be entered at the close of the trial.

Judgment how entered

SEC. 401. Judgments in justices' courts must be substantially in the form required by this act. When the judgment is rendered in a case where the defendant is subject to arrest and imprisonment thereon, the fact that the defendant is so subject must be stated in the judgment.

Excess beyond jurisdiction may be remitted.

SEC. 402. When the amount found due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess, and judgment may be rendered for the residue.

Offer to compromise before trial.

SEC. 403. If the defendant, at any time before the trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued; but if he do not accept such offer before the trial, and fail to recover in the action a sum equal to the offer, he cannot recover costs, but costs must be adjudged against him, and, if he recover, be deducted from his recovery. The offer and failure to accept it cannot be given in evidence, nor affect the recovery otherwise than as to cost.

Costs included in the judgment.

SEC. 404. The justice must tax and include in the judgment the costs allowed by law to the prevailing party.

Abstract of judgment.

SEC. 405. The justice, on the demand of a party in whose favor judgment is rendered, must give him an abstract of the judgment in the following form (filling blanks according to the facts):

"TERRITORY OF IDAHO, —— COUNTY.
——, *Plaintiff, vs.* ——, *Defendant.*

"In Justices' Court, before ——, Justice of the Peace.

" —— *Precinct* (or city), ——, 18—.

"Judgment entered for plaintiff (or defendant) for $——, on the —— day of ——.

"I certify that the foregoing is a correct abstract of a judgment rendered in said action in my court (or, as the case may be, in the court of ———, Justice of the Peace, as appears by his docket now in my possession, as his successor in office). "————————,

Justice of the Peace."

Abstract of judgment when filed.

SEC. 406. The abstract may be filed and docketed in the office of the county recorder of the county in which the judgment was rendered, and must be docketed in the judgment docket of the probate court. The time of the receipt of the abstract by the recorder must be noted by him thereon and entered in the docket.

Effect of docketing.

SEC. 407. From the time of docketing in the county recorder's office execution may be issued thereon by the probate judge or the clerk of said probate court to the sheriff of any county in the Territory other than the county in which the judgment was obtained in the same manner and with like effect as if issued on judgments of the probate courts.

Judgment not a lien unless abstract is recorded.

SEC. 408. A judgment rendered in a justices' court creates no lien upon any lands of the defendant unless an abstract is filed and recorded in the office of the recorder of the county in which the lands are situated. When so filed and recorded, such a judgment is a lien upon the lands of the judgment debtor situated in that county.

CHAPTER XXVI.

Execution from Justices' Courts.

SECTION 409. Execution may issue within five years.
410. Execution, contents of.
411 Renewal of execution.
412. Duty of officer receiving execution.
413. Sections applicable.

Execution may issue within five years.

SEC. 409. Execution for the enforcement of a judgment of a justices' court may be issued by the justice who entered the judgment, or his successor in office, on the application of the party entitled thereto, at any time within five years from the entry of judgment.

Execution, contents of.

SEC. 410. The execution must be directed to the sheriff or to a constable of the county, and must be subscribed by the justice and bear date the day of its delivery to the officer. It must intelligibly refer to the judgment by stating the names of the parties and the name of the justice before whom, and of the county, and the precinct or city where, and the time when it was entered;

the amount of the judgment, if it be for money; and if less than the whole sum is due, the true amount due thereon. It must contain in like cases, similar directions to the sheriff or constable as are required by the provisions of chapter seventeen of this act in an execution to the sheriff.

Renewal of execution.

SEC. 411. An execution may, at the request of the judgment creditor, be renewed before the expiration of the time fixed for its return by the word "renewal" written thereon, with the date thereof, and subscribed by the justice. Such renewal has the effect of an original issue, and may be repeated as often as necessary. If an execution is returned unsatisfied, another may be afterwards issued.

Duty of officer receiving execution.

SEC. 412. The sheriff or constable to whom the execution is directed must execute the same in the same manner as the sheriff is required by the provisions of chapter seventeen of this act to proceed upon execution directed to him; and the constable, when the execution is directed to him, is vested for that purpose with all the powers of the sheriff.

Sections applicable.

SEC. 413. The sections of this act from section 226 to section 266, both inclusive, are applicable to justices' courts, the word "constable" being substituted to that end for the word "sheriff," and the word "justice" for the word "judge."

CHAPTER XXVII.

Contempt in Justices' Courts.

SECTION 414. Contempts, a justice may punish for.
415. Proceedings for contempt.
416. Same.
417. Punishments for contempts.
418. Conviction entered in docket.
419. Docket what to contain.
420. Entries therein primary evidence of the fact.
421. Index to docket.
422. Dockets, etc., must be delivered to successor.
423. Proceedings upon vacancy, etc.
424. Successor may issue execution upon docket of predecessor.
425. Who deemed successor.
426. Probate judge to determine successor.
427. Process issued to any part of the county.
428. Blanks must be filled in all papers.
429. Receive moneys and pay over the same.
430. When another justice may act in his behalf.
431. May require security for costs.
432. Who entitled to costs.
433. What provisions of act applicable to justices' courts.

SEC. 414. A justice may punish as for contempt persons guilty of the following acts, and no other: **Contempts a justice may punish for.**

First—Disorderly, contemptuous or insolent behavior towards the justice while holding the court, tending to interrupt the due course of the trial or other judicial proceeding.

Second—A breach of the peace, boisterous conduct, or violent disturbance in the presence of the justice or in the immediate vicinity of the court held by him, tending to interrupt the due course of a trial or other judicial proceeding.

Third—Disobedience or resistance to the execution of a lawful order or process made or issued by him.

Fourth—Disobedience to a subpœna duly served, or refusing to be sworn or to answer as a witness.

Fifth—Rescuing any person or property in the custody of an officer by virtue of an order or process of the court held by him.

SEC. 415. When a contempt is committed in the immediate view and presence of the justice, it may be punished summarily; to that end an order must be made, reciting the facts as they occurred, and adjudging that the person proceeded against is thereby guilty of contempt, and that he be punished as therein prescribed. **Proceedings for contempt.**

SEC. 416. When the contempt is not committed in the immediate view and presence of the justice, a warrant of arrest may be issued by such justice, on which the person so guilty may be arrested and brought before the justice immediately, when an opportunity to be heard in his defense or excuse must be given. The justice may thereupon discharge him or may convict him of the offense. **Same.**

SEC. 417. A justice may punish for contempts by fine or imprisonment, or both; such fine not to exceed in any case one hundred dollars, and such imprisonment not to exceed one day. **Punishments for contempts.**

SEC. 418. The conviction, specifying particularly the offense and the judgment thereon, must be entered by the justice in his docket. **Conviction entered in docket.**

Docket of Justice.

SEC. 419. Every justice must keep a book denominated a "Docket" in which he must enter: **Docket what to contain.**

First—The title of every action or proceeding; and if a sum of money be claimed, the amount thereof.

Second—The object of the action or proceeding.

Third—The date of the summons and the time of its return; and if an order to arrest the defendant be made, or a writ of attachment be issued, a statement of the fact.

Fourth—The time when the parties, or either of them, appear, or their non-appearance if default be made; a minute of the pleadings and motions; if in writing, referring to them; if not in writing, a concise statement of the material parts of the pleading.

Fifth—Every adjournment, stating on whose application and to what time.

Sixth—The demand for a trial by jury, when the same is made and by whom made, the order for the jury, and the time appointed for the return of the jury and for the trial.

Seventh—The names of the jurors who appear and are sworn, and the names of all witnesses sworn, and at whose request.

Eighth—The verdict of the jury, and when received; if the jury disagree and are discharged, the fact of such disagreement and discharge.

Ninth—The judgment of the court, specifying the costs included and the time when rendered.

Tenth—The issuing of the execution, when issued, and to whom; the renewals thereof, if any, and when made, and a statement of any money paid to the justice, when and by whom.

Eleventh—The receipt of a notice of appeal, if any be given, and of the appeal bond, if any be filed.

Entries therein primary evidence of the fact.

SEC. 420. The several particulars of the last section specified must be entered under the title of the action to which they relate, and (unless otherwise in this act provided) at the time when they occur. Such entries in a justice's docket, or a transcript thereof, certified by the justice or his successor in office, are primary evidence of the facts so stated.

Index to docket.

SEC. 421. A justice must keep an alphabetical index to his docket, in which must be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs must be entered in the index in the alphabetical order of the first letter of the family name.

Docket, &c., to be delivered to successor.

SEC. 422. Every justice of the peace, upon the expiration of his term of office, must deposit with his successor his official dockets and all papers filed in his office, his own as well as those of his predecessors, or any others which may be in his custody to be kept as public records.

Proceedings upon vacancy, etc.

SEC. 423. If the office of a justice become vacant by his death or removal from the precinct, or city, or otherwise, before his successor is elected and qualified the docket and papers in possession of such justice must be deposited in the office of some other justice in the city or precinct, to be by him delivered to the successor of such justice. If there is no other justice in the town or precinct, then the docket and papers of such justice must be deposited in the office of the county recorder of the county, to be by him delivered to the successor in office of the justice.

Sec. 424. Any justice with whom the docket of his predecessor, or of any other justice, is deposited, has and may exercise over all actions and proceedings entered in such docket the same jurisdiction as if originally commenced before him. In case of the creation of a new county, or the change of the boundary between two counties, any justice into whose hands the docket of a justice formerly acting as such within the same territory may come, is for the purpose of this section, considered the successor of such former justice.

Successor may issue execution upon docket of predecessor.

Sec. 425. The justice elected to fill a vacancy is the successor of the justice whose office became vacant before the expiration of a full term. When a full term expires, the same or another person elected to take office in the same city or precinct from that time is the successor.

Who deemed successor.

Sec. 426. When two or more justices are equally entitled, under the last section, to be deemed the successor in office of the justice, the probate judge must, by a certificate subscribed by him and filed in the office of the probate court, designate which justice is the successor of a justice going out of office or whose office has become vacant.

Probate judge to determine the successor.

General Provisions.

Sec. 427. Justices of the peace may issue subpœnas in any action or proceeding in the courts held by them, and final process on any judgment recovered therein to any part of the county.

Process issued to any part of the county.

Sec. 428. The summons, execution, and every other paper made or issued by a justice, except a subpœna, must be issued without a blank to be filled by another; otherwise it is void.

Blanks must be filled in all papers.

Sec. 429. Justices of the peace must receive from the sheriffs or constables of their county all moneys collected on any process or order issued from their courts respectively, and all moneys paid to them in their official capacity, and must pay the same over to the parties entitled or authorized to receive them without delay.

Receive moneys and pay over the same.

When another justice may act in his behalf.

SEC. 430. In case of the sickness or other disability, or a necessary absence of a justice, on a return of a summons or at the time appointed for a trial another justice of the same town, city, or precinct may, at his request, attend in his behalf, and thereupon is vested with the power, for the time being, of the justice before whom the summons was returnable. In that case the proper entry of the proceedings before the attending justice, subscribed by him, must be made in the docket of the justice before whom the summons was returnable. If the case is adjourned, the justice before whom the summons was returnable may resume jurisdiction.

May require security for costs.

SEC. 431. Justices may in all cases require a deposit of money or an undertaking as security for costs of court before issuing a summons.

Who entitled to costs

SEC. 432. The prevailing party in justices' courts is entitled to costs of the action, and also of any proceedings taken by him in and of an execution issued upon any judgment recovered by him.

What provisions of act applicable to justices' courts.

SEC. 433. Justices' courts, being courts of peculiar and limited jurisdiction, only those provisions of this act which are in their nature applicable to the organization, powers, and course of proceedings in justices' courts, or which have been made applicable by special provisions in this act, are applicable to justices' courts and the proceedings therein.

CHAPTER XXVIII.

Appeals in General.

SECTION 434. Judgment and order may be reviewed.
435. Order out of court reviewed by the judge.
436. Party aggrieved may appeal.
437. Within what time an appeal may be taken.
438. Appeal how taken.
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IN CIVIL ACTIONS.

Judgment and order may be reviewed.

SEC. 434. A judgment, or order, in a civil action, except when expressly made final by this act, may be reviewed as prescribed in this chapter, and not otherwise.

Orders out of court reviewed by the judge.

SEC. 435. An order made out of court, without notice to the adverse party, may be vacated or modified, without notice, by the judge who made it; or may be vacated or modified, on notice, in the manner in which other motions are made.

Party aggrieved may appeal.

SEC. 436. Any party aggrieved may appeal in the cases prescribed in this chapter. The party appealing is known as the "appellant," and the adverse party as the "respondent."

Within what time an appeal may be taken.

SEC. 437. An appeal may be taken:

First—From a final judgment in an action or special proceeding commenced in the court in which the judgment is rendered within one year after the entry of judgment. But an exception to the decision or verdict, on the ground that it is not supported by the evidence, cannot be reviewed on appeal from the judgment unless the appeal is taken within sixty days after the rendition of the judgment.

Second—From a judgment rendered by a probate or justices' court within twenty-one days from the entry of judgment.

Third—From an order granting or refusing a new trial; from an order granting or dissolving an injunction; from an order refusing to grant or dissolve an injunction; from an order dissolving or refusing to dissolve an attachment; from an order granting or refusing to grant a change of the place of trial; from any special order made after final judgment, and from an interlocutory judgment in actions for partition of real property, within thirty days after the order or interlocutory judgment is made and entered in the minutes of the court or filed with the clerk.

Appeal how taken.

SEC. 438. The appeal shall be made by filing with the clerk of the court with whom the judgment or order appealed from is entered a notice stating the appeal from the same, or some specific part thereof, and serving a copy of the notice upon the adverse party or his attorney. The order of service is immaterial, but the appeal is ineffectual for any purpose, unless, within five days after service of the notice of appeal, an undertaking be filed, or a deposit of money be made with the clerk, as hereinafter provided, or the undertaking be waived by the adverse party in writing.

Undertaking on appeal.

SEC. 439. The undertaking on appeal must be in writing, and must be executed on the part of the appellant, by at least two sureties, to the effect that the appellant will pay all the damages and costs which may be awarded against him on the appeal, or on a dismissal thereof, not exceeding three hundred dollars; or that sum must be deposited with the clerk with whom the judgment or order was entered, to abide the event of the appeal.

Undertaking on appeal from a money judgment.

SEC. 440. If the appeal be from a judgment or order directing the payment of money, it does not stay the execution of the judgment or order, unless a written undertaking be executed on the part of the appellant, by two or more sureties, to the effect that they are bound in double the amount named in the judgment or order; that if the judgment or order appealed from, or any part thereof, be affirmed, and the appeal be dismissed, the appellant will pay the amount directed to be paid by the judgment or order, or the part of such amount as to which the judgment or order is affirmed, if affirmed only in part, and all damages and costs which may be awarded against the appellant upon the appeal, and that if the appellant does not make such payment within thirty days after the filing of the remittitur from the Supreme Court in the court from which the appeal is taken, judgment may be entered, on motion of the respondent, in his favor, against the sureties, for such amount, together with the interest that may be due thereon and the damages and costs which may be awarded against the appellant on the appeal. If the judgment or order appealed from be for a greater amount than two thousand dollars, and the sureties do not state in their affidavits of justification accompanying the undertaking that they are each worth the sum specified in the undertaking, the stipulation may be that the judgment to be entered against the sureties shall be for such amounts only as in their affidavits they may state that they are severally worth, and judgment may be entered against the sureties by the court from which the appeal is taken pursuant to the stipulations herein designated. When the judgment or order appealed from is made payable in a specified kind of money or currency, the judgment against the sureties upon the undertaking must be made payable in the same kind of money or currency.

Appeal from judgment for delivery of documents.

SEC. 441. If the judgment or order appealed from direct the assignment or delivery of documents or personal property, the execution of the judgment or order cannot be stayed by appeal, unless the things required to be assigned or delivered be placed in the custody of such officer or receiver as the court, or a judge thereof, may appoint, or unless an undertaking be entered into on the part of the appellant, with at least two sureties, and in such amount as the court, or the judge thereof, may direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.

Appeal from judgment directing the execution of a conveyance, etc.

SEC. 442. If the judgment or order appealed from direct the execution of a conveyance or other instrument, the execution of the judgment or order cannot be stayed by the appeal until the instrument is executed and deposited with the clerk with whom the judgment or order is entered, to abide the judgment of the appellate court.

Undertaking on appeal concerning real property.

SEC. 443. If the judgment or order appealed from direct the sale or delivery of possession of real property, the execution of the same shall not be stayed, unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that, during the possession of such property by the appellant, he will not commit, nor suffer to be committed, any waste thereon; and that, if the judgment be affirmed, or the appeal dismissed, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of the possession thereof, pursuant to the judgment or order, not exceeding a sum to be fixed by the judge of the court by which the judgment was rendered or order made, and which shall be specified in the undertaking. When the judgment is for the sale of mortgaged premises and the payment of a deficiency arising upon the sale, the undertaking shall also provide for the payment of such deficiency.

Stay of proceedings.

SEC. 444. Whenever an appeal is perfected, as provided in the preceding sections in this chapter, it stays all further proceedings in the court below upon the judgment or order appealed from, or upon the matter embraced therein, and releases from levy property which was levied upon under execution issued upon such judgment, but the court may proceed upon any other matter embraced in the action and not affected by the order appealed from. And the court below may, in its discretion, dispense with or limit the security required by this chapter when the appellant is an executor, administrator, trustee, or other person acting in another's right. An appeal does not continue in force an attachment, unless an undertaking be executed and filed on the part of the appellant, by at least two sureties, in double the amount of the debt claimed by him, that the appellant will pay all costs and damages which the respondent may sustain by reason of the attachment in case the order of the court below be sustained, and unless, within five days after the entry of the order appealed from, such appeal be perfected.

The security may be limited in the case of an execution, etc.

Undertaking may be in one instrument or several.

SEC. 445. The undertaking prescribed by sections four hundred and thirty-nine, four hundred and forty, four hundred and forty-one and four hundred and forty-three may be in one instrument or several, at the option the appellant.

Justification of sureties on undertaking on appeal.

SEC. 446. The adverse party may except to the sufficiency of the sureties to the undertakings mentioned in sections four hundred and thirty-nine, four hundred and forty, four hundred and forty-one and four hundred and forty-three at any time within thirty days after the filing of such undertakings, and unless they, or other sureties, within twenty days after the appellant has been served with notice of such exception, justify, before a judge of the court below, a probate judge, or county clerk of the court, upon five days' notice to the respondent, of the time and place of justification, execution of the judgment, order or decree appealed from is no longer stayed; and in all cases where an undertaking is required on appeal by the provisions of this chapter, a deposit in the court below of the amount of the judgment appealed from, and three hundred dollars in addition, shall be equivalent to filing the undertaking; and in all cases the undertaking or deposit may be waived by the written consent of the respondent.

Undertakings in cases not specified.

SEC. 447. In cases not provided for in sections four hundred and forty, four hundred and forty-one, four hundred and forty-two and four hundred and forty-three, the perfecting of an appeal, by giving the undertaking or making the deposit, mentioned in section four hundred and thirty-nine, stays proceedings in the court below upon the judgment or order appealed from, except where it directs the sale of perishable property, in which case the court below may order the property to be sold, and the proceeds thereof to be deposited to abide the judgment of the appellate court.

What papers to be used on appeal. SEC. 448. On an appeal from a final judgment, the appellant must furnish the court with a copy of the notice of appeal, of the judgment-roll, and of any bill of exceptions or statement in the case upon which the appellant relies. Any statement used on motion for a new trial, or settled after decision of such motion, when the motion is made upon the minutes of the court, provided in section two hundred and twelve, or any bill of exceptions settled, as provided in sections two hundred and three and two hundred and four, or used on motion for a new trial, may be used on appeal from a final judgment equally as upon appeal from the order granting or refusing the new trial.

Papers on appeal from judgment rendered on appeal. SEC. 449. On appeal from a judgment on an appeal, or from an order, except an order granting or refusing a new trial, the appellant must furnish the court with a copy of the notice of appeal, of the judgment or order appealed from, and of papers used on the hearing in the court below.

New trial; papers used on appeal. SEC. 450. On an appeal from an order granting or refusing a new trial, the appellant must furnish the court with a copy of the notice of appeal, of the order appealed from, and of the papers designated in section two hundred and twelve of this act.

Copies and undertakings, how certified. SEC. 451. The copies provided for in the last three sections must be certified to be correct by the clerk or the attorneys, and must be accompanied with a certificate of the clerk that an undertaking on appeal, in due form, has been properly filed, or a stipulation of the parties waiving an undertaking.

When appeal dismissed; when not. SEC. 452. If the appellant fails to furnish the requisite papers, the appeal may be dismissed; but no appeal can be dismissed for insufficiency of the undertaking thereon, if a good and sufficient undertaking, approved by a justice of the Supreme Court, be filed in the Supreme Court before the hearing upon motion to dismiss the appeal.

Effect of dismissal. SEC. 453. The dismissal of an appeal is, in effect, an affirmance of the judgment or order appealed from, unless the dismissal is expressly made without prejudice o another appeal.

What may be reviewed

Sec. 454. Upon an appeal from a judgment, the court may review the verdict or decision, if excepted to, or any intermediate order, if excepted to, which involves the merits or necessarily affects the judgment.

Remedial powers of appellate court.

Sec. 455. When the judgment or order is reversed or modified, the appellate court may make complete restitution of all property and rights lost by the erroneous judgment or order, so far as such restitution is consistent with protection of a purchaser of property at a sale ordered by the judgment, or had under process issued upon the judgment, on the appeal from which the proceedings were not stayed; and for relief in such cases the appellant may have his action against the respondent, enforcing the judgment for the proceeds of the sale of the property, after deducting therefrom the expenses of the sale. When it appears to the appellate court that the appeal was made for delay, it may add to the costs such damages as may be just.

On judgment on appeal, remittitur must be certified to the clerk of the court below.

Sec. 456. When judgment is rendered upon the appeal, it shall be certified by the clerk of the Supreme Court to the clerk with whom the judgment-roll is filed or the order appealed from is entered. In cases of appeal from the judgment, the clerk with whom the roll is filed shall attach the certificate to the judgment-roll and enter a minute of the judgment of the Supreme Court on the docket against the original entry. In cases of appeal from the order, the clerk shall enter at length in the record of the court the certificate received and minute against the entry of the order appealed from, a reference to the certificate, with a brief statement that such order had been affirmed, reversed or modified, as the case may be, by the Supreme Conrt on appeal.

APPEALS TO THE SUPREME COURT FROM THE DISTRICT COURT.

When appeal may be taken.

Sec. 457. An appeal may be taken to the Supreme Court from the district courts in the following cases:

First—From a final judgment entered in an action or special proceeding commenced in these courts or brought into these courts from other courts.

Second—From an order granting or refusing a new trial; from an order granting or dissolving an injunction; from an order refusing to grant or dissolve an injunction; from an order dissolving or refusing to dissolve an attachment; from an order changing or refusing to change the place of trial; from any special order made after final judgment and from such interlocutory judgment in actions for partition as determine the rights and interests of the respective parties and directs partition to be made; *provided*, that no appeal shall be had from the district court to the Supreme Court in civil cases where the sum in dispute shall not exceed one hundred dollars; *and provided further*, that the Supreme Court shall have appellate jurisdiction in all criminal cases of which the district court has cognizance.

APPEALS TO THE DISTRICT COURT FROM THE PROBATE COURT IN CIVIL ACTIONS.

SEC. 458. An appeal may be taken to the district court from the probate court in civil cases as follows: **When may be taken.**

First—From a final judgment in an action of forcible entry and detainer; in an action to prevent or abate a nuisance; and in any special cases and proceedings, and in cases which involve the legality of any tax, import, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to twenty-five dollars.

Second—From an order granting or refusing a new trial in the cases designated in this section, and from any special order made after final judgment in such cases.

APPEALS FROM PROBATE COURTS.

SEC. 459. An appeal may be taken to the district court from a judgment or order of the probate court: **When may be taken.**

First—Granting, refusing or revoking letters testamentary, or of administration, or of guardianship.

Second—Admitting or refusing to admit a will to probate.

Third—Against or in favor of the validity of a will, or revoking the probate thereof.

Fourth—Against or in favor of setting apart property, or making an allowance for a widow or child.

Fifth—Against or in favor of directing the partition, sale, or conveyance of real property.

Sixth—Settling an account of an executor, or administrator, or guardian.

Seventh—Refusing, allowing, or directing the distribution, or partition of an estate, or any part thereof, or the payment of a debt, claim, legacy, or distributive share.

Eighth—Overruling a motion for new trial.

Ninth—Confirming a report of an appraiser setting apart the homestead.

An executor and administrator not required to give undertaking on appeal.

SEC. 460. When an executor or administrator who has given an official undertaking appeals from a judgment or order from the probate court made in the proceedings had upon the estate of which he is administrator or executor, his official undertaking stands in the place of an undertaking on appeal, and the sureties therein are liable as on such undertaking.

When acts of administrator not invalid.

SEC. 461. When the order or decree appointing an executor, or administrator, or guardian, is reversed on appeal for error, and not for want of jurisdiction of the court, all lawful acts in administration upon the estate performed by such executor, or administrator, or guardian, if he have qualified, are as valid as if such order or decree had been affirmed.

APPEALS TO THE DISTRICT COURT FROM JUSTICES' COURTS.

When may be taken.

SEC. 462. Any party dissatisfied with a judgment rendered in a civil action in a justices' court where the amount of the judgment exceeds twenty-five dollars, may appeal therefrom to the district court of the county within twenty days after the rendition of the judgment. The appeal shall be taken by filing a notice of appeal with the justice, and serving a copy on the adverse party. The notice shall state whether the appeal is taken from the whole or a part of the judgment, and, if from a part, what part, and whether the appeal is taken on questions of law or fact, or both.

Appeal how taken.

SEC. 463. When a party appeals to the district court on questions of law alone, he shall, within ten days from the rendition of judgment, prepare a statement of the case and file the same with the justice. The statement shall contain the grounds on which the party intends to rely on the appeal, and so much of the evidence as may be necessary to explain the grounds, and no more. Within ten days after he receives notice that the statement is filed, the adverse party, if dissatisfied with the same, may file amendments. The proposed statement and amendments shall be settled by the justice, and if no amendments be filed, the original statement shall be adopted. The statement thus adopted, or as settled by the justice, with a copy of the docket of the justice, and all motions filed with him by the parties during the trial, and the notice of appeal, shall be used on the hearing of the appeal before the district court.

When tried anew.

SEC. 464. When a party appeals to the district court on questions of fact, or on questions of both law and fact, no statement need be made; but the action shall be tried anew in the district court.

Copies of papers on appeal.

SEC. 465. Upon receiving the notice of appeal, and on payment of the fees of the justice, and filing an undertaking as required in the next section, the justice shall, within five days, transmit to the clerk of the district court, if the appeal be on a question of law alone, a certified copy of his docket, the statement as admitted or as settled, the notice of appeal, and the undertaking filed; or, if the appeal be on questions of fact, or of both law and fact, a certified copy of his docket, the pleadings, all notices, motions, and other papers filed in the cause the notice of appeal, and the undertaking filed; and the justice may be compelled by the district court, by an order entered upon motion, to transmit such papers, and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the justice by the party or his attorney. In the district court either party shall have the benefit of all legal objections made in the justices' courts.

Undertaking on appeal and justification thereon.

SEC. 466. An appeal from a justice's court shall not be effectual for any purpose, unless an undertaking be filed, with two or more sureties, in the sum of one hundred dollars, for the payment of the costs on appeal; or, if a stay of proceedings be claimed, in a sum equal to twice the amount of the judgment, including costs, when the judgment is for the payment of money, or twice the value of the property, including costs, when the judgment is for the recovery of specific personal property; and shall be conditioned, when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from, and all costs, if the appeal be withdrawn or dismissed, or the amount of any judgment, and all costs, that may be recovered against him in said action in the district court. Where the action is for the recovery of specific personal property, the undertaking shall be conditioned that the appellant will pay the judgment and costs appealed from, and obey the order of the court made therein, if the appeal be withdrawn or dismissed, or any judgment and costs that may be recovered against him in said action in the district court, and will obey any order made by the court therein. The undertaking shall be accompanied by the affidavit of the sureties that they are residents of the county, and are each worth the amount specified in the undertaking, over and above all their just debts and liabilities, exclusive of property exempt from execution, or the bond shall be executed by a sufficient number of sureties, who can justify in the aggregate to an amount equal to double the amount specified in the bond, or a deposit of the amount of the judgment (including all costs) appealed from, or of the value of the property (including all costs) in actions for the recovery of specific personal property, with the justice; and such deposit shall be equivalent to the filing of the undertaking in this act mentioned; and in such cases the justice shall transmit the money to the clerk of the district court, to be by him paid out upon the order of the court. The adverse party may, however, except to the sufficiency of the sureties within five days after the filing of the undertaking, and unless they, or other sureties, justify before the justice before whom the appeal is taken, within five days thereafter, upon notice to the adverse party, to the amount stated in their affidavits, the appeal shall be regarded as if no undertaking had been given.

Manner of staying proceedings.

SEC. 467. If an execution be issued on the filing of the undertaking staying all proceedings, the justice shall, by order direct the officer to stay all proceedings on the same. Such officer shall, upon payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees be not paid, the officer may retain so much of the property, or proceeds thereof, as may be necessary to pay the same.

CHAPTER XXIX.

Proceedings Against Joint Debtors.

SECTION 468. When parties may be summoned afterjudgment.
469. Summons, what to contain and how served.
470. Affidavit to accompany summons.
471. Answer, what it may contain.
472. The pleadings in the case, what constitutes.
473. Issues, how tried, and judgment.
474. Proceedings on offer to compromise suit.

When parties may be summoned after judgment.

SEC. 468. When a judgment is recovered against one or more of several persons jointly indebted upon an obligation, by proceeding as provided in section thirty-two, those who were not originally served with the summons and did not appear to the action may be summoned to show cause why they should not be bound by the judgment, in the same manner as though they had been originally served with the summons.

Summons, what to contain, and how served.

SEC. 469. The summons, as provided in the last section, shall describe the judgment, and require the person summoned to show cause why he should not be bound by it, and shall be served in the same manner, and returnable within the same time, as the original summons. It shall not be necessary to file a new complaint.

Affidavit to accompany summons.

SEC. 470. The summons shall be accompanied by an affidavit of the plaintiff, his agent, representative or attorney, that the judgment, or some part thereof, remains unsatisfied, and shall specify the amount due thereon.

Answer, what it may contain.

SEC. 471. Upon such summons, the defendant may answer within the time specified therein, denying the judgment or setting up any defense which may have arisen subsequently, or he may deny his liability on the obligation upon which the judgment was recovered, except a discharge from such liability by the statute of limitation.

The pleadings in the case.

SEC. 472. If the defendant in his answer deny the judgment, or set up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answer shall constitute the written allegations in the case. If he deny his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, summons, with the affidavit annexed, and the answer, shall constitute such written allegations.

Issues, how tried, and judgment.

SEC. 473. The issues formed may be tried as in other cases; but when the defendant denies in his answer any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it shall be for the amount remaining unsatisfied on such original judgment, with interest thereon.

Offer of the Defendant to Compromise the Whole or a Part of an Action.

Proceedings on offer to compromise suit.

SEC. 474. The defendant may, at any time before the trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken against him for the sum or property, or to the effect therein specified. If the plaintiff accept the offer, and give notice thereof within five days, he may file the offer, with an affidavit of notice of acceptance, and the clerk shall enter judgment accordingly. If the notice of acceptance be not given, the offer shall be deemed withdrawn, and shall not be given in evidence; and if the plaintiff fail to recover a more favorable judgment, he shall not recover costs, but shall pay the defendant's costs from the time of the offer.

CHAPTER XXX.

Inspection of Documents, and Miscellaneous Provisions as to Records and Writings.

SECTION 475. Inspection and copies of writings, etc.; court or judge may order.
476. When evidence of contents of writing may be given.
477. When and how an alteration must be explained.
478. Judicial record how proved.
479. The same.
480. Foreign judicial record how attested.
481. The same.
482. Printed copies of laws when admitted as evidence.
483. How seal may be attached to record, etc.

Inspection and copies of writings, etc.

SEC. 475. Any court in which an action is pending, or a judge thereof, or a probate judge, may, upon notice, order either party to give to the other, within a specified time, an inspection and copy, or permission to take a copy of entries of accounts in any book or of any document or paper in his possession, or under his control, containing evidence relating to the merits of the action or the defense therein. If compliance with the order be refused, the court may exclude the entries of accounts of the book, or the document or paper, from being given in evidence; or, if wanted as evidence by the party applying, may direct the jury to presume them to be such as he alleges them to be; and the court may also punish the party refusing for a contempt. This section is not to be construed to prevent a party from compelling another to produce books, papers, or documents when he is examined as a witness.

When evidence of contents of writing may be given.

SEC. 476. There shall be no evidence of the contents of a writing other than the writing itself, except in the following cases:

First—When the original has been lost or destroyed, in which case proof of the loss or destruction shall first be made.

Second—When the original is in the possession of the party against whom the evidence is offered, and he fails to produce it after reasonable notice.

Third—When the original is a record or other document in the custody of a public officer.

Fourth—When the original has been recorded, and a certified copy of the record is made evidence by the statute.

Fifth—When the original consists of numerous accounts, or other documents, which cannot be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole.

When and how an alteration must be explained.

SEC. 477. The party producing a writing as genuine which has been altered after its execution in a part material to the question in dispute, and such alteration is not noted on the writing, shall account for the appearance or alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made. If he do that, he may give the writing in evidence, but not otherwise.

Judicial records how proved.

SEC. 478. A judicial record of this Territory, or of the United States, may be proved by the production of the original, or a copy thereof, certified by the clerk or other person having a legal custody thereof, under the seal of the court, to be a true copy of such record.

Same.

SEC. 479. The records and judicial proceedings of the courts of any State or Territory of the United States may be proved or admitted in the courts of this Territory by the attestation of the clerk and the seal of the court annexed (if there be a seal), together with a certificate of the judge, chief justice or presiding magistrate, as the case may be, that the said attestation is in due form.

Foreign judicial records how attested.

SEC. 480. A judicial record of a foreign country may be proved by the production of a copy thereof, certified by the clerk with the seal of the court annexed (if there be a clerk and seal), or by the legal keeper of the record, with the seal of his office annexed (if there he a seal), to be a true copy of such record, together with a certificate of a judge of the court that the person making the certificate is the clerk of the court or legal keeper of the record, and in either case that the signature is genuine and the certificate in due form; and also, together with the certificate of the minister or embassador of the United States, or of a consul of the United States in such foreign country, that there is such a court, specifying generally the nature of its jurisdiction, and verifying the signatures of the judge and clerk, or other legal keeper of the record.

The same.

SEC. 481. A copy of the judicial record of a foreign country shall also be admissible in evidence upon proof: *First*, that the copy offered has been compared by the witness with the original, and is an exact transcript of the whole of it; *second*, that such original was in the custody of the clerk of the court, or other legal keeper of the same; and, *third*, that the copy is duly attested by a seal, which is proved to be the seal of the court; or, if there be no such seal, or if it be not a record of a court, by the signature of the legal keeper of the original.

Printed copies of laws when admitted as evidence.

SEC. 482. Printed copies in volumes of statutes, codes, or other written law, enacted by any other State or Territory, or foreign government, purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the courts and judicial tribunals of such State, Territory, or government, shall be admitted by the courts and officers of this Territory, on all occasions, as presumptive evidence of such laws.

How seal may be attached to record.

SEC. 483. A seal of a court or public officer, when required to any writ, or process, or proceeding, or to authenticate a copy of any record or document, may be impressed with wax, wafer, or any substance, and then attached to the writ, process, or proceeding, or to the copy of the record or document, or it may be impressed on the paper alone.

CHAPTER XXXI.

Of Motions, Orders, Service of Papers, and Miscellaneous Provisions.

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Order and motion defined.

SEC. 484. Every direction of a court or judge made or entered in writing, and not included in a judgment, is denominated an "order." An application for an order is a "motion."

Motions and orders where made

SEC. 485. Motions shall be made in the county in which the action is brought, or in an adjoining county in the same district. Orders made out of court may be made by the judge of the court in any part of the Territory.

Notice of motion, at what time to be given.

SEC. 486. When a written notice of a motion is necessary, it shall be given, if the court be held in the same district with both parties, five days before the time appointed for the hearing; otherwise, ten days. When the notice is served by mail, the number of days before the hearing must be increased one day for every twenty miles of distance between the place of deposit and the place of service; such increase, however, not to exceed in all sixty days; but the court, or judge, or probate judge, may prescribe a shorter time.

Transfer of motions and orders to show cause.

SEC. 487. When a notice of motion is given, or an order to show cause is made returnable before a judge out of court, and at the time fixed for the motion, or on the return day of the order, the judge is unable to hear the parties, the matter may be transferrred by his order to some other judge before whom it might originally have been brought.

Order for payment of money, how enforced.

SEC. 488. Whenever an order for the payment of a sum of money is made by a court pursuant to the provisions of this act, it may be enforced by executions in the same manner as if it were a judgment.

Notices and papers how served.

SEC. 489. Notices must be in writing, and notices and other papers may be served upon the party or attorney in the manner prescribed by this act, when not otherwise provided by this act.

When and how served.

SEC. 490. The service may be personal, by delivery to the party or attorney on whom the service is required to be made, or it may be as follows:

First—If upon an attorney, it may be made during his absence from his office, by leaving the notice or other papers with his clerk therein, or with a person having charge thereof; or, when there is no person in the office, by leaving them, between the hours of eight in the morning and six in the afternoon, in a conspicuous place in the office; or, if it be not open, so as to admit of such service, then by leaving them at the attorney's residence with some person of suitable age and discretion; and if his residence be not known, then by putting the same, enclosed in an envelope, into the post-office, directed to such attorney.

Second—If upon a party, it may be made by leaving the notice, or other paper, at his residence, between the hours of eight in the morning and six in the evening, with some person of suitable age and discretion; and if his residence be not known, by putting the same, enclosed in an envelope, into the post-office, directed to such party.

SEC. 491. Service by mail may be made when the

Service by mail, when.

person making the service, and the person on whom it is to be made, reside or have their offices in different places, between which there is a regular communication by mail.

Service by mail, how.

SEC. 492. In case of service by mail, the notice, or other paper, must be deposited in the post-office addressed to the person on whom it is to be served, at his office or place of residence, and the postage paid. The service is complete at the time of deposit; but if, within a given number of days after such service a right may be exercised or an act is to be done by the adverse party, the time within which such right may be exercised or act be done is extended one day for every twenty miles' distance between the place of deposit and the place of address; such extension, however, not to exceed sixty days in all.

Appearance

Notices after appearance.

SEC. 493. A defendant shall be deemed to appear in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice for him. After appearance, a defendant, or his attorney, shall be entitled to notice of all subsequent proceedings of which notice is required to be given. But where a defendant has not appeared, service of notice or paper need not be made upon him, unless he be imprisoned for want of bail.

Service on non-residents.

Notice to be served on attorney

SEC. 494. When a plaintiff or a defendant who has appeared resides out of the Territory, and has no attorney in the action or proceeding, the service may be made on the clerk for him. But in all cases where a party has an attorney in the action or proceeding, the service of papers, when required, shall be upon the attorney instead of the party, except of subpœnas, of writs, and other process issued in the suit, and of papers to bring him into contempt. The foregoing provisions of this chapter do not apply to the service of a summons or other process, or of any paper to bring a party into contempt.

Service by telegraph.

SEC. 495. Any summons, writ or order in any civil suit or proceeding, and all other papers requiring service, may be transmitted by telegraph for service in any place, and the telegraphic copy of such writ, or order, or papers so transmitted may be served or executed by the officer or person to whom it is sent for that purpose, and returned by him, if any return be requisite, in the same manner and with the same force and effect in all respects as the original thereof might be delivered to him, and the officer or person serving or executing the same has the same authority, and is subject to the same liabilities, as if the copy were the original. The original, when a writ or order, must also be filed in the court from which it was issued, and a certified copy thereof must be preserved in the telegraph office from which it was sent. In sending it either the original or the certified copy may be used by the operator for that purpose. Whenever any document to be sent by telegraph bears a seal, either private or official, it is not necessary for the operator, in sending the same, to telegraph a description of the seal, or any words or device thereon; but the same may be expressed in the telegraphic copy by the letters, "L. S.," or by the word "Seal."

Time, how computed.

SEC. 496. The time within which an act is to be done, as provided in this act, shall be computed by excluding the first day and including the last. If the last day be Sunday, it shall be excluded.

When time may be extended.

SEC. 497. When an act is to be done, as provided in this act, relates to the pleadings in the action, or the undertaking to be filed, or the justification of sureties, or the preparations of statements, or the bills of exceptions or of amendments thereto, or to the service of notices other than of appeal, the time allowed by the act may be extended, upon good cause shown, by the court in which the action is pending, or the judge thereof, or, in the absence of such judge, from the county in which the action is pending, by the probate judge; but such extension shall not exceed twenty days without the consent of the adverse party.

CHAPTER XXXII.

Of Costs.

SECTION 498. Compensation of attorneys; costs to parties.
499. When allowed of course to plaintiff.
500. When costs allowed only in one action.
501. When allowed of course to defendant.
502. Costs when in the discretion of the court; when not allowed.
503. When costs may be severed.
504. When costs at discretion of court on appeal.
505. Referee's fees.
506. Costs may be imposed on continuance.
507. Tender; when costs not allowed.
508. Costs in action, by and against an administrator, etc.
509. Costs in a review other than by appeal.
510. Cost bill, how and when filed.
511. Costs on appeal, how claimed and recovered.
512. Interest and costs included in judgment.
513. When security for costs required.

SECTION 514. If security not given, action may be dismissed.
515. Costs when Territory a party.
516. Costs when county is a party.

Compensation of attorneys.

Cost to parties.

SEC. 498. The measure and mode of compensation of attorneys and counsellors at law shall be left to the agreement, express or implied, of the parties; but there shall be allowed to the prevailing party in any action in the Supreme Court, district courts, and probate courts, his costs and necessary disbursements in the action, or special proceedings in the nature of the action.

When allowed of course to plaintiff.

SEC. 499. Costs shall be allowed, of course, to the plaintiff upon a judgment in his favor in the following cases:

First—In an action for the recovery of real property.

Second—In an action to recover the possession of personal property when the value of the property amounts to one hundred dollars or over. Such value shall be determined by the jury, court or referee by whom the action is tried.

Third—In an action for the recovery of money or damages when the plaintiff recovers one hundred dollars or over.

Fourth—In a special proceeding in the nature of an action.

Fifth—In an action which involves the title or possession of real estate or the equality of any tax, impost, assessment, toll or municipal fine.

When costs allowed only in one action.

SEC. 500. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action, against several parties who might have joined as defendants in the same action, no costs shall be allowed to the plaintiff in more than one of such actions, which may be at his election, if the party proceeded against in the other actions were, at the commencement of the previous action, openly within this Territory; but the disbursements of the plaintiff shall be allowed to him in each action.

When allowed of course to defendant.

SEC. 501. Costs shall be allowed, of course, to the defendant upon a judgment in his favor in the action mentioned in section 499 and special proceedings in the nature of the action.

Cost when in the discretion of the court.

When not allowed.

SEC. 502. In other actions than those mentioned in section 499 costs may be allowed or not; and if allowed, may be apportioned between the parties, or the same or adverse sides, in the discretion of the court; but no costs shall be allowed in an action in a district court for the recovery of money or damages when the plaintiff recovers less than one hundred dollars, nor in an action to recover the possession of personal property when the value of the property is less than one hundred dollars.

Sec. 503. When there are several defendants in the actions mentioned in section 499 not united in interest and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court shall award costs to such of the defendants as have judgment in their favor.

When costs may be severed.

Sec. 504. In the following cases the costs of an appeal shall be in the discretion of the court:

When cost at discretion of court on appeal.

First—When a new trial is ordered.

Second—When the judgment is modified.

Sec. 505. The fees of referees shall be six dollars to each for every day spent in the business of the reference, and the parties shall not agree upon any other rate of compensation in writing, nor shall any other rate of compensation be allowed by the courts.

Referees fees.

Sec. 506. When an application is made to a court or referee to postpone a trial, the payment of costs occasioned by the postponement may be imposed, in the discretion of the court or referee, as a condition of granting the same.

Costs may be imposed on continuance.

Sec. 507. When, in an action for the recovery of money only, the defendant alleges in his answer that, before the commencement of the action, he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in court for the plaintiff the amount so tendered, and the allegation be found to be true, the plaintiff shall not recover costs, but shall pay costs to the defendant.

Tender, when cost not allowed

Sec. 508. In an action prosecuted or defended by an executor, administrator, trustee of express trust, or a person expressly authorized by statute, costs may be recovered as in an action by and against a person prosecuting or defending in his own right; but such costs shall, by the judgment, be made chargeable only upon the estate, fund, or party represented, unless the court shall direct the same to be paid by the plaintiff or defendant, personally, for mismanagement or bad faith in the action or defense.

Cost in action, by and against an administrator, etc.

Sec. 509. When the decision of a court of inferior jurisdiction, in a special proceeding, is brought before a court of higher jurisdiction for a review in any other way than by appeal, the same costs shall be allowed as in cases on appeal, and may be collected by execution, or in such manner as the court may direct, according to the nature of the case.

Costs in a review, other than by an appeal.

Cost bill, how and when filed.

SEC. 510. The party in whose favor judgment is rendered, and who claims his costs, must deliver to the clerk of the court, within two days after the verdict or notice of the decision of the court or referee, or if the entry of judgment on the verdict of the decision be stayed, then before such entry is made, a memorandum of the items of his costs and necessary disbursements in the action or proceeding, which memorandum must be verified by the oath of the party or his attorney, or agent, or by the clerk of his attorney, stating that, to the best of his knowledge and belief, the items are correct, and that the disbursements have been necessarily increased in the action or proceeding. A party dissatisfied with the costs claimed may, on motion, and on notice to the adverse party, within two days, have the same retaxed by the court in which the judgment was rendered, or by the judge thereof at chambers.

Costs on appeal, how claimed and recovered.

SEC. 511. Whenever costs are awarded to a party by an appellate court, if he claims such costs, he must, within twenty days after the remittitur is filed with the clerk below, deliver to such clerk a memorandum of his costs, verified as prescribed in the preceding section, and thereafter he may have an execution therefor as upon a judgment.

Interest and costs included in judgment.

SEC. 512. The clerk must include in the judgment entered up by him any interest on the verdict or decision of the court from the time it was rendered or made, and the costs, if the same have been taxed or ascertained; and he must, within two days after the same are taxed or ascertained, if not included in the judgment, insert the same in a blank left in the judgment for that purpose, and must make a similar insertion of the costs in the copies and docket of the judgment.

When security for costs required.

SEC. 513. When the plaintiff in an action resides out of the Territory, or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant. When required, all proceedings in the action shall be stayed until an undertaking, executed by two or more persons, is filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of three hundred dollars. A new or an additional undertaking may be ordered by the court or judge, upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new or additional undertaking is executed and filed.

SEC. 514. After the lapse of thirty days from the service of notice that security is required, or of an order for new or additional security, upon proof thereof, and that no undertaking, as required, has been filed, the court or judge may order the action to be dismissed.

If security not given action may be dismissed.

SEC. 515. When the Territory is a party, and costs are awarded against it, they must be paid out of the Territorial treasury.

Costs when Territory a party.

SEC. 516. When a county is a party, and costs are awarded against it, they must be paid out of the county treasury.

Costs when county is a party.

CHAPTER XXXIII.

General Provisions.

SECTION 517. Lost papers, how supplied.
518. Papers, defective titles held good, when.
519. Successive actions on same contract.
520. Consolidation of actions.
521. Actions to determine adverse claims.
522. When the clerk may take testimony.
523. Clerk to keep registers.
524. Three referees must meet; two may act.
525. Actions against sheriffs for official acts.
526. Requisites of undertakings.
527. Who not required to give bonds.
528. When surety paying judgment substituted.

SEC. 517. If an original pleading or paper be lost, the court may authorize a copy thereof to be filed and used instead of the original.

Lost papers how supplied.

SEC. 518. An affidavit, notice, or other paper, without the title of the action or proceeding in which it is made, or with a defective title, shall be as valid and effectual for any purpose as if duly entitled, if it intelligibly refer to such action or proceeding.

Papers, defective title held good when.

SEC. 519. Successive actions may be maintained upon the same contract or transaction whenever, after the former action, a new cause of action arise therefrom.

Successive actions on same contract,

SEC. 520. Whenever two or more actions are pending at one time between the same parties and in the same court upon causes of actions which might have been joined, the court may order the actions to be consolidated.

Consolidation of actions.

SEC. 521. An action may be brought by one person against another for the purpose of determining an avderse claim which the latter makes against the former, for

Actions to determine adverse claims.

money or property, upon an alleged obligation; and also against two or more persons for the purpose of compelling one to satisfy a debt due to the other for which the plaintiff is bound as security.

When the clerk may take testimony.

SEC. 522. On the trial of an action in a court of record, if there is no official reporter of the court in attendance, either party may require the clerk to take down testimony in writing.

Clerk to keep register.

SEC. 523. The clerk shall keep among the records of the court two registers of actions. He shall enter in them the title of the action, with brief notes under it, from time to time, of all papers filed and proceedings had therein.

Three referees must meet, two may act.

SEC. 524. When there are three referees, or three arbitrators, all shall meet, but two of them may do any act which might be done by all.

Actions against sheriffs for official acts.

SEC. 525. If an action is brought against a sheriff for an act done by virtue of his office, and he gives written notice thereof to the sureties on any bond of indemnity received by him, the judgment recovered therein is conclusive evidence of his right to recover against such sureties; and the court, or the judge in vacation, may, on motion, upon notice of five days, order judgment to be entered up against them for the amount so recovered, including costs.

Requisites of undertakings.

SEC. 526. In all cases where an undertaking with sureties is required by the provisions of this act, the officer taking the same must require the sureties to accompany it with an affidavit that they are each residents and householders, or freeholders, within the Territory, and are each worth the sum specified in the undertaking over and above all their just debts and liabilities, exclusive of property exempt from execution; but when the amount specified in the undertaking exceeds two thousand dollars, and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties.

Who not required to give bonds.

SEC. 527. In any civil action or proceeding wherein the Territory or the people of the Territory is a party plaintiff, or any Territorial officer, in his official capacity or on behalf of the Territory, or any county, city or town, is a party plaintiff or defendant, no bond, written undertaking or security can be required of the Territory, or the people thereof, or any officer thereof, or of any county, city, or town; but on complying with the other provisions of this act, the Territory, or the people thereof, or any Territorial officer acting in his official capacity, shall have the same rights, remedies and benefits as if the bond, undertaking or security were given and approved as required by this act.

When surety paying judgment, substituted. SEC. 528. Whenever any surety on an undertaking on appeal, executed to stay proceedings upon a money judgment, pays the judgment, either with or without action, after its affirmation by the appellate court, he shall be substituted to the rights of the judgment creditor, and shall be entitled to control, enforce and satisfy such judgment in all respects as if he had recovered the same.

CHAPTER XXXIV.

Of Special Proceedings of a Civil Nature.

SECTION 529. Parties how designated.
530. Judgment in, what is.

PRELIMINARY PROVISIONS.

Parties how designated. SEC. 529. The party prosecuting a special proceeding may be known as the plaintiff, and the adverse party as the defendant.

Judgment in, what is. SEC. 530. A judgment in a special proceeding is the final determination of the rights of the parties therein. The definitions of a motion and an order in a civil action are applicable to similar acts in a special proceeding.

CHAPTER XXXV.

The Writ of Certiorari, or Review.

SECTION 532. When and by what courts granted.
533. Application for, how made.
534. The writ, to whom directed.
535. Contents of the writ.
536. Stay of proceedings.
537. Service of the writ.
538. Extent of the review.
539. Proceedings on return; judgment.
540. Transmission of ccpy of judgment.
541. Judgment-roll.

SEC. 531. The writ of certiorari may be denominated the "writ of review."

When and by what courts granted. SEC. 532. This writ may be granted on application by any court of this Territory except a justice's or probate court. The writ shall be granted in all cases where an inferior tribunal, board, or officer exercising judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy and adequate remedy.

Application for, how made. SEC. 533. The application shall be made on affidavit by the party beneficially interested, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

The writ, to whom directed. SEC. 534. The writ may be directed to the inferior tribunal, board, or officer, or to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal the clerk, if there be one, shall return the writ, with the transcript required.

Contents of the writ. SEC. 535. The writ of review shall command the party to whom it is directed to certify fully to the court issuing the writ, at a specified time and place, a transcript of the record and proceedings (describing or referring to them with convenient certainty), that the same may be reviewed by the court, and requiring the party, in the meantime, to desist from further proceedings in the matter to be reviewed.

Stay of proceedings. SEC. 536. If a stay of proceedings be not intended, the words requiring the stay shall be omitted from the writ. These words may be inserted or omitted, in the sound discretion of the court; but if omitted, the power of the inferior court or officer shall not be suspended nor the proceedings stayed.

Service of the writ. SEC. 537. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by the court.

Extent of the review. SEC. 538. The review on this writ shall not be extended further than to determine whether the inferior tribunal, board, or officer has regularly pursued the authority of such tribunal, board, or officer.

Proceedings on return. SEC. 539. If the return of the writ be defective, the court may order a further return to be made. When a full return has been made, the court shall proceed to hear the parties, or such of them as shall attend for that purpose, and may thereupon give judgment, either affirming, or annulling, or modifying the proceedings below.

Judgment.

Transmission of copy of judgment. SEC. 540. A copy of the judgment, signed by the clerk, shall be transmitted to the inferior tribunal, board or officer having the custody of the record or proceeding certified to.

Judgment roll. SEC. 541. A copy of the judgment, signed by the clerk, entered upon or attached to the writ and return, shall constitute the judgment-roll.

CHAPTER XXXVI.

The Writ of Mandate.

SECTION 542. Mandate defined.
543. By what court issued.
544. When and upon what to issue.
545. Character of the writ; object of.
546. The alternative and peremotory writ.
547. The answer on return of writ.
548. Court may order questions of fact submitted to a jury.
549. Applicant may demur or countervail answer by proof.
550. Motion for new trial. when made.
551. When clerk to transmit verdict; hearing to be had.
552. How case to be heard when no answer made, etc.
553. Judgment on recovery by applicant.
454. Service of the writ.
555. Penalty for disobeying the writ.

Mandate defined. SEC. 542. The writ of mandamus must hereafter be denominated the "writ of mandate."

By what court issued. SEC. 543. It may be issued by any court in this Territory, except by a justice's or probate court, to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station, or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person.

When writ may be issued. SEC. 544. This writ shall be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It shall be issued upon affidavit on the application of the party beneficially interested.

Character of the writ, object of. SEC. 545. The writ may be either alternative or peremptory. The alternative writ shall state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before court, at a specified time and place, why he has not done so. The peremptory writ shall be in a similar form, except the words requiring the party to show cause why he has not done as commanded shall be omitted, and a return day inserted.

The alternative and peremptory writ.

SEC. 546. When the application to the court is made without notice to the adverse party, and the writ be allowed, the alternative shall be first issued; but if the application be upon due notice, and the writ be allowed, the peremptory may be issued in the first instance. The notice of the application, when given, shall be at least ten days. The writ shall not be granted by default. The case shall be heard by the court, whether the adverse party appear or not.

The answer on return of writ.

SEC. 547. On the return day of the alternative, or the day on which the application for the writ is noticed, or such further day as the court may allow, the party on whom the notice shall have been served may show cause by answer under oath, made in the same manner as an answer to a complaint in a civil action.

Court may order questions of fact submitted to a jury.

SEC. 548. If an answer be made which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation on which the application of the writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had and the verdict certified to the court. The question to be tried shall be distinctly stated in the order for trial, and the county shall be designated in which the same shall be had. The order may also direct the jury to assess any damages which the applicant may have sustained in case they find for him.

Applicant may demur, countervail answer by proof.

SEC. 549. On the trial the applicant shall not be precluded by the answer of any valid objection to its sufficiency, and may countervail it by proof, either in direct denial or by way of avoidance.

Motion for new trial, when made.

SEC. 550. The motion for a new trial must be made in the court in which the issue of fact is tried.

When clerk to transmit verdict, hearing to be had.

SEC. 551. If no notice of a motion for a new trial be given, or, if given, be denied, the clerk, within five days after the rendition of the verdict or denial of the motion, shall transmit to the court in which the application for the writ is pending a certified copy of the verdict attached to the order of trial; after which either party may bring on the argument of the application, upon reasonable notice to the adverse party.

SEC. 552. If no answer be made, the case must be heard on the papers of the applicant. If the answer raises only questions of law, or puts in issue immaterial statements not affecting the substantial rights of the parties, the court must proceed to hear, or fix a day for hearing the argument of the case. How case to be heard when no answer made &c.

SEC. 553. If the judgment be given for the applicant, he may recover the damages which he has sustained as found by the jury, or as may be determined by the court or referees, upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue, and a peremptory mandate shall also be awarded without delay. Judgment on recovery by applicant.

SEC. 554. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court. Service upon a majority of the members of any board or body is service upon the board or body, whether at the time of the service the board or body was in session or not. Service of the writ.

SEC. 555. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board, or person, if it appear to the court that any member of such tribunal, corporation or board, or such person upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding one thousand dollars. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and proper for the complete enforcement of the writ. Penalty for disobeying the writ.

CHAPTER XXXVII.

The Writ of Prohibition.

SECTION 556. Prohibition defined.
557. By what courts and how issued.
558. The writ may be alternative or peremptory.
559. Certain preceding sections applicable.

SEC. 556. The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of Prohibition defined.

any tribunal, corporation, board, or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person.

By what courts and how issued.

SEC. 557. It may be issued by any court, except justices' or probate courts, to an inferior tribunal, or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon affidavit on the application of the person beneficially interested.

The writ may be alternative or pre-emptory.

SEC. 558. The writ must be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party to desist or refrain from further proceedings or action in the matter specified therein until the further order of the court from which it is issued, and to show cause before such court, at a specified time and place, why such party should not be absolutely restrained from any further proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained, etc., must be omitted, and a return day inserted.

Certain preceding sections applicable.

SEC. 559. The provisions of the preceding chapter, except of the first four sections thereof, apply to this proceeding.

CHAPTER XXXVIII.

Writs of Review, Mandate, and Prohibition may Issue and be Heard at Chambers.

SECTION 560. When may be issued and heard.

When may be issued and heard.

SEC. 560. Writs of review, mandate and prohibition may be issued by any justice of the Supreme Court, or by any district judge, in vacation, and may, in the discretion of such justice or judge issuing the writ, be made returnable, and a hearing had thereon in vacation.

CHAPTER XXXIX.

Rules of Practice and Appeals in the Writs of Review, Mandate and Prohibition.

SECTION 561. Practice in civil actions applicable.
562. Same.

SEC. 561. Except as otherwise provided in the four preceding chapters, the provisions of this act concerning rules of practice in civil actions are applicable to and constitute the rules of practice in the proceedings mentioned in the four preceding chapters.

Practice in civil actions applicable.

SEC. 562. The provisions of this act relative to new trials and appeals, except in so far as they are inconsistent with the four preceding chapters, apply to the proceedings mentioned in the four preceding chapters.

Same.

CHAPTER XL.

Of Summary Proceedings.

SECTION 563. Judgment by confession may be entered.
564. Statement in writing, form of.
565. Filing statement and entering judgment.
566. How in justices' courts.
567. Controversy, how submitted.
568. Judgment roll.
569. Judgment, how enforced or appealed from.

CONFESSION OF JUDGMENT WITHOUT ACTION.

SEC. 563. A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed in this chapter. Such judgment may be entered in any court having jurisdiction for like amounts.

Judgment by confession.

SEC. 564. A statement in writing shall be made, signed by the defendant, and verified by his oath, to the following effect:

Statement in writing, form of.

First—It shall authorize the entry of judgment for a specified sum.

Second—If it be for money due or to become due, it shall state concisely the facts out of which it arose, and shall show that the sum confessed therefor is justly due or to become due.

Third—If it be for the purpose of securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liability, and shall show that the sum confessed therefor does not exceed the same.

Filing statement &c. SEC. 565. The statement shall be filed with the clerk of the court in which the judgment is to be entered, who shall endorse upon it and enter in the judgment book a judgment of such court for the amount confessed, with ten dollars costs. The statement and affidavit, with the judgment endorsed, shall thereupon become the judgment-roll.

How in justices courts. SEC. 566. In a justice's court where a judgment is entered by confession, the statement may be filed with the justice, who must thereupon enter a judgment of his court in his docket for the amount confessed, with ten dollars costs. If a transcript of such judgment be filed with a county recorder, a copy of the statement must be filed with it.

SUBMITTING A CONTROVERSY WITHOUT ACTION.

Controversy, how submitted. SEC. 567. Parties to a question in difference which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought; but it must appear by affidavit that the controversy is real and the proceedings in good faith to determine the rights of the parties. The court shall thereupon hear and determine the case, and render judgment thereon, as if an action were depending.

Judgment roll. SEC. 568. Judgment shall be entered in the judgment book, as in other cases, but without costs, for any proceeding prior to the trial. The case, the submission, and a copy of the judgment constitute the judgment-roll.

Judgment how enforced. SEC. 569. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be in the same manner subject to appeal.

CHAPTER XLI.

Forcible Entry and Unlawful Detainer.

SECTION 570. Forcible entry defined.
571. Authority of justice; unlawful detainer defined.
582. Issuance of summons.
573. Service of summons.
574. Trial may be by jury.
575. Service of summons other than personal.
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578. Showing required by plaintiff or defendant.
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581. Damages recoverable.
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585. Appeal, how taken.
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588. Appellate court cannot dismiss for want of form.
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590. Form of summons.
591. Form of writ of restitution.

Forcible entry defined.

SEC. 570. No person or persons shall hereafter make an entry into lands, tenements, or other possessions, but in cases where entry is given by law; and in such cases not with strong hand, nor with multitude of people, but only in a peaceable manner; and if any from henceforth do to the contrary, and therefor be duly convicted, he shall be punished by fine.

Authority of justice; unlawful detainer defined.

SEC. 571. Any justice of the peace shall have authority to inquire, as hereinafter directed, as well against those who make unlawful or forcible entry into lands, tenements, or other possessions, and detain the same, as against those who, having lawful and peaceful entry into lands, tenements, or other possessions, unlawfully detain the same; and if it be found, upon such inquiry, that an unlawful or forcible entry hath been made, and that the said lands, tenements, or other possessions, after a lawful entry, are held unlawfully, then such justice shall cause the party complaining to have restitution thereof.

Issuance of summons.

SEC. 572. When any complaint shall be made in writing to any justice of the peace of any such unlawful or forcible entry, or unlawful detainer, said justice shall issue a summons, directed to the sheriff or any constable of the county, commanding him to summon the person or persons against whom such complaint shall have been made, to appear before the said justice on a day in such summons named, which shall not be less than four nor more than ten days from the issuing of such summons, and at the place therein mentioned.

Service of summons.

SEC. 573. Such summons shall be served upon the person or persons against whom the same is issued by delivering a certified copy thereof to such person or persons at least four days before the return day thereof; and the officer serving the same shall make a special return of the time, place, and manner of serving such summons.

Trial may be by jury.

SEC. 574. After the return of the summons, served as hereinbefore provided, and at the time and place appointed in said summons, the justice shall proceed to hear and determine said complaint, unless either party shall demand a jury, in which case the justice shall issue a venire for a jury, in the same manner and upon the same terms as in other cases provided for trial by jury in justices' courts, and such jury shall be sworn as in other cases.

Service of summons other than personal.

SEC. 575. If, at the time of making such complaint, it shall be made to appear that the person or persons against whom said complaint is made, or either of them, are absent from the county, it shall be the duty of the justice before whom the same is made to issue his summons, as hereinbefore provided, and the same may be served by leaving a certified copy thereof at the last and usual place of abode of such person or persons, not less than four days before the return day thereof, which copy shall be left with some member of the family, or some person residing at such place, of suitable age and discretion, to whom the contents thereof shall be explained by the officer leaving the same, and the officer shall make a special return of the time, place and manner of serving said summons, and the suit shall thereafter proceed the same as though a personal service were had of such summons.

Adjournment of trial.

SEC. 576. The justice may, in his discretion, adjourn any trial under this act, not exceeding ten days; and when the defendant, his agent or attorney shall make oath that he cannot safely proceed to trial for want of some material witness (naming him); that he has made due exertion to obtain such witness; and believes, if an adjournment be allowed, he will be able to procure the attendance of such witness, or his deposition, in time to produce the same upon the trial; in which case, if such person or persons will give bond, with one or more sufficient sureties, conditioned to pay the said complainant for all rent that may accrue during the pending of such suit and all costs and damages consequent upon such adjournment, the said justice shall adjourn said cause for such reasonable time as may appear necessary, not exceeding three months.

Testimony, how taken. SEC. 577. The testimony of any witness which may be considered necessary by either party may be taken in the same manner and with like effect as is provided for the taking of testimony in other cases in justices' courts.

Showing required by plaintiff or defendant. SEC. 578. On the trial the plaintiff shall only be required to show, in addition to the forcible entry or detainer complained of, that he was peaceably in actual possession at the time of a forcible entry, or was entitled to the possession of the premises at the time of a forcible holding over. The defendant may show in his defense that he, or his ancestors, or those whose interest in such premises he claims, have been in quiet possession thereof for the space of one whole year together next before the said inquisition, and that his interest therein is not then ended or determined; and such showing shall be a bar to the prosecution; and in no case when the title of land is necessarily involved shall a justice of the peace have cognizance.

Verdict and judgment. SEC. 579. If upon the trial of any complaint under this act the justice or jury shall find the defendant or defendants, or either of them, guilty of the allegations in the complaint, said justice shall thereupon enter judgment for the plaintiff to have restoration of the premises, and shall impose such fine, not exceeding one hundred dollars, considering all the circumstances, as he may deem just, and shall tax the costs for the complainant, and may issue execution therefor; and the said justice shall also award and issue a writ of restitution; but if the said justice or jury find that the person complained of is not guilty, the justice shall tax the costs against the complainant, and issue execution therefor.

New venire, when. SEC. 580. If the jury empaneled cannot agree upon a verdict, the justice may, with the consent of the parties, discharge them and issue a venire, returnable forthwith, or at some other time agreed upon by the parties.

Damages recoverable SEC. 581. In all cases of a verdict by a justice or jury for the complainant, the damages shall be assessed as well for waste and injury committed upon the premises as for the rents and profits during such detainer, and the verdict shall also find the monthly value of the rents and profits of the said premises; and the complainant shall be entitled to recover treble damages against the persons against whom judgment has been rendered, which damages shall be assessed by the justice or jury, and when so assessed shall be trebled by said justice, and entered as a judgment in the cause, upon which execution may issue.

Tenants holding over, procedure in cases of.

SEC. 582. When any person shall hold over any lands, tenements, or other possessions, after the termination of the time for which they are demised, or let to him or her, or to the person under whom he or she holds possession, or contrary to the conditions or covenants of the lease or agreement under which he or she holds, or after any rent shall become due according to the terms of such lease or agreement, and shall remain unpaid for the space of three days; in all such cases, if the lessor, his heirs, executors, administrators, assigns, agent, or attorney, shall make demand in writing of such tenant that he or she shall deliver possession of the premises held as aforesaid, and if such tenant shall refuse or neglect, for the space of three days after such demand, to quit the possession of such lands or tenements, or to pay the rent thereof, due and unpaid as aforesaid, upon complaint therefor to a justice of the peace of the proper county, the justice shall proceed to hear, try, and determine the same in the same manner as in other cases hereinbefore provided for, but shall impose no fine upon any such case mentioned in this section.

Limitation of action.

SEC. 583. The preceding section shall not extend to any person who has or shall have continued in possession one year after the termination of the time for which the premises were demised, or leased, or let to him or her, or those under whom he or she holds possession, to any person who continues in possession three years quietly and peaceably.

Contempt of juror or witness, penalty for.

SEC. 584. Every person summoned as a juror or subpœnaed as a witness who shall not appear, or who, appearing, shall refuse to serve or give evidence in any prosecution instituted under this act, shall forfeit and pay for any such default or refusal, to the use of the county, unless some reasonable cause be assigned, such fine, not exceeding twenty dollars, as the said justice shall think proper to impose, and execution may be issued therefor.

Appeal, how taken.

SEC. 585. If either party shall feel aggrieved by the verdict of the jury or decision of the justice, he may appeal within ten days, as in other cases tried before justices of the peace, to the district court, and he shall give bond, with two or more sufficient sureties, to be approved by said justice, conditioned to pay all costs of such appeal, and abide the order the court may make therein, and pay all rent and other damages justly accruing during the pendency of such appeal; and upon the filing of the notice of appeal, and the affidavit of the appellant that the appeal is taken in good faith, and that he intends to perfect said appeal, the justice shall grant a stay of the writ of restitution, for not exceeding two days, for the purpose of allowing the appellant an opportunity to file his appeal bond, and for no other.

Stay of proceedings. SEC. 586. Upon taking such appeal, all further proceedings in the case shall be thereby stayed, and the appellate court, in all cases which are now pending, or which may hereafter be brought, shall proceed to try the case anew, and shall issue all necessary writs and process to carry out the provisions of this act. All laws, or parts of laws, which require a statement of the case, or evidence, or exceptions, to be taken before a justice of the peace, on the trial of a case for forcible entry and unlawful detainer, in order to perfect an appeal, are hereby repealed, and the same shall be tried in the appellate court on the evidence introduced before said appellate court.

Trial in appellate court.

Writ of restitution, how stayed. SEC. 587. If a writ of restitution shall have been issued previous to the taking of the appeal, the justice shall give the appellant a certificate of the allowance of such appeal; and upon the serving of such certificate upon the officer having such writ of restitution, said officer shall cease all further proceedings by virtue of such writ; and if such writ shall not have been completely executed, the parties in possession shall remain in possession of the premises until the appeal shall be determined.

Appellate court cannot dismiss for want of form. SEC. 588. In all cases of appeal under this act the appellate court shall not dismiss or quash the proceedings for want of form, only provided the proceedings shall have been conducted substantially according to the provisions of this act.

Amendments allowed. SEC. 589. Amendments to the complaint, answer or summons, in matters of form only, may be allowed by the court at any time before final judgment, upon such terms as may be just; and all matters of excuse, justification, or avoidance of the allegations in the complaint, may be given in evidence under the answer.

Form of summons. SEC. 590. The following or equivalent forms may be used in proceedings under this act—to wit:

SUMMONS.

The People of the United States of the Territory of Idaho to the Sheriff or any Constable of the County aforesaid:

WHEREAS, A. B., of the county of ——, hath exhibited unto me, a justice of the peace for said county, a complaint against C. D., of the county of ——, for that the said C. D., of the county of ——, on the —— day of ——, A. D. ——, at the county of ——, [*here insert the substance of the complaint with sufficient certainty*].

You are therefore commanded, To summon the said C. D., if he be found in your county, to be and appear before me, at my office, [*or stating the place,*] on the —— day of ——, A. D. ——, then and there to make answer to the complaint aforesaid.

Given under my hand and seal, this —— day of ——, A. D. ——.

E. F., *Justice of the Peace.*

SEC. 591—WRIT OF RESTITUTION.

Form of writ.

The People of the United States of the Territory of Idaho to the Sheriff or any Constable of the County aforesaid:

WHEREAS, A. B., of the county of ——, at a court of inquiry of an unlawful or forcible detainer, [*as the case may be,*] held at my office, [*or state the place,*] in the county aforesaid, on the —— day of ——, A. D. ——, before me, a justice of the peace for the county aforesaid, by the consideration of the court, hath recovered judgment against C. D., to have restitution of [*here describe the premises, as in the complaint*].

You are therefore commanded, That, taking with you the force of the county, if necessary, you cause the said C. D. to be immediately removed from the aforesaid premises, and the said A. B. to have peaceable restitution of the same.

And you are also commanded, That, of the goods and chattels of the said C. D., within said county, you cause to be made the sum of —— dollars for the said plaintiff, together with costs of suit endorsed thereon, and make return hereof within thirty days from this date.

Given under my hand this —— day of —— A. D. ——.

E. F., *Justice of the Peace.*

CHAPTER XLII.

Of Contempts.

SECTION 592. What act or omission are contempts.
593. Re-entry on property after eviction when a contempt.
594. When committed in view of the court; when not.

SECTION 595. Attachment and order to show cause.
596. Admission to bail.
597. Person to be detained until discharged.
598. Bail bond, form of.
599. Warrant to be returned.
600. Hearing.
601. Judgment and penalty, if guilty.
602. Contempts by omission, penalty for.
603. If parties fail to appear, proceedings.
604. Sickness, excuse for non-appearance.
605. Judgment and order, final.

What act or omission are contempt.

SEC. 592. The following acts or omissions, in respect to a court of justice, or proceedings therein, are contempts of the authority of the court:

First—Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceeding.

Second—A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding.

Third—Misbehavior in office, or other wilful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service.

Fourth—Deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding.

Fifth—Disobedience of any lawful judgment, order, or process of the court.

Sixth—Assuming to be an officer, attorney, or counsel of a court, and acting as such without authority.

Seventh—Rescuing any person or property in the custody of an officer by virtue of an order or process of such court.

Eighth—Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial.

Ninth—Any other unlawful interference with the process or proceedings of a court.

Tenth—Disobedience of a subpœna duly served, or refusing to be sworn or answer as a witness.

Eleventh—When summoned as a juror in a court, neglecting to attend or serve as such, or improperly conversing with a party to an action to be tried at such court, or with any other person, in relation to the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court.

Twelfth—Disobedience by an inferior tribunal, magistrate, or officer, of the lawful judgment, order or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer.

Re-entry on property after eviction, when a contempt.

SEC. 593. Every person dispossessed or ejected from, or out of, any real property by the judgment or process of any court of competent jurisdiction, and who, not having right so to do, re-enters into or upon, or takes possession of any such real property, or induces or procures any person not having right so to do, or aids or takes him therein, is guilty of a contempt of the court by which such judgment was rendered or from which such process issued. Upon a conviction for such contempt, the court or justice of the peace must immediately issue an alias process, directed to the proper officer, and requiring him to restore the party entitled to the possession of such property under the original judgment or process to such possession.

When committed in view of the court.

SEC. 594. When a contempt is committed in the immediate view and presence of the court, or judge at chambers, it may be punished summarily, for which an order shall be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. When the contempt is not committed in the immediate view and presence of the court, or judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt or a statement of the facts by the referees or arbitrators or other judicial officer.

When not.

Attachment and order to show cause.

SEC. 595. When the contempt is not committed in the immediate view and presence of the court or judge, a warrant of attachment may be issued to bring the person charged to answer; or, without a previous arrest, a warrant of commitment may, upon notice, or upon an order to show cause, be granted; and no warrant of commitment shall be issued without such previous attachment to answer or such notice or order to show cause.

Admission to bail.

SEC. 596. Whenever a warrant of attachment is issued pursuant to this act, the court or judge shall direct, by an endorsement on such warrant, that the person charged may be let to bail for his appearance in an amount to be specified in such endorsement.

SEC. 597. Upon executing the warrant of attachment, the sheriff shall keep the person in custody, bring him before the court or judge, and detain him until an order be made in the premises, unless the person arrested entitle himself to be discharged, as provided in the next section.

Person to be detained until discharged.

SEC. 598. When a direction to let the person arrested to bail is contained in the warrant of attachment, or endorsed thereon, he shall be discharged from the arrest, upon executing and delivering to the officer, at any day before the return of the warrant, a written undertaking, with two sufficient sureties, to the effect that the person arrested will appear on the return of the warrant, and abide the order of the court or judge thereupon; or they will pay, as may be directed, the sum specified in the warrant.

Bail bond, form of.

SEC. 599. The officer shall return the warrant of arrest and the undertaking, if any, received by him from the person arrested by the return day specified therein.

Warrant to be returned

SEC. 600. When the person arrested has been brought up or appeared, the court or judge shall proceed to investigate the charge, and shall hear any answer which the person arrested may make to the same, and may examine witnesses for or against him; for which an adjournment may be had from time to time if necessary.

Hearing.

SEC. 601. Upon the answer and evidence taken, the court or judge shall determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he is guilty of the contempt, a fine may be imposed on him not exceeding five hundred dollars, or he may be imprisoned not exceeding five days, or both.

Judgment and penalty if guilty.

SEC. 602. When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he shall have performed it, and in that case the act shall be specified in the warrant of commitment.

Contempt by omission, penalty for.

SEC. 603. When a warrant of arrest has been returned served, if the person arrested do not appear on the return day, the court or judge may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, the measure of damages in the action shall be the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued and the costs of the proceeding.

If party fail to appear, proceedings.

SEC. 604. Whenever by the provisions of this act an officer is required to keep a person arrested on a warrant

Sickness excuse for non appearance.

of attachment in custody, and to bring him before a court or judge, the inability, from illness or otherwise, of the person to attend shall be a sufficient excuse for not bringing him up; and the officer shall not confine a person arrested upon the warrant in a prison, or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance.

Judgment and order, final.

SEC. 605. The judgment and order of the court or judge made in cases of contempt shall be final and conclusive.

CHAPTER XLIII.

Of Arbitrations.

SECTION 606. What may be submitted to arbitration.
607. Must be writing.
608. May be entered as an order of the court; revocation.
609. Powers of arbitrators.
610. Majority may decide; must be sworn.
611. Award to be in writing; judgment where to be entered.
612. Award how vacated in certain cases.
613. Court may modify award.
614. Decision on motion appealable.
615. What recoverable on revocation.

What may be submitted to arbitration.

SEC. 606. Persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between them, except a question of title to real property in fee or for life. This qualification shall not include questions relating merely to the partition or boundaries of real property.

Must be in writing.

SEC. 607. The submission to arbitration shall be in writing, and may be to one or more persons.

May be entered as an order of the court.

SEC. 608. It may be stipulated in the submission that it be entered as an order of the district court, for which purpose it shall be filed with the clerk of such court in the district where the parties, or one of them, reside. The clerk shall thereupon enter in his register of actions a note of submission, with the names of the parties, the names of the arbitrators, the date of the submission, when filed, and the time limited by the submission, if any, within which the award shall be made. When so entered, the submission shall not be revoked except by the consent of both parties. The arbitrators may be compelled by the court to make an award, and the award may be enforced by the court in the same manner as a judgment. If the submission be not made

Revocation

an order of the court, it may be revoked at any time before the award is made.

Powers of arbitrators.

SEC. 609. Arbitrators shall have power to appoint a time and place for hearing, to adjourn from time to time, to administer oaths to witnesses, to hear the allegations and evidence of the parties, and to make an award thereon.

Majority may decide; must be sworn.

SEC. 610. All the arbitrators shall meet and act together during the investigation; but when met, a majority may determine the question. Before acting, they shall be sworn before an officer authorized to administer oaths faithfully and fairly to hear and examine the allegations and evidence of the parties in relation to the matters in controversy, and to make a just award according to their undertaking.

Award to be in writing; judgment when to be entered.

SEC. 611. The award shall be in writing, and signed by the arbitrators, or a majority of them, and delivered to the parties. When the submission is made an order of the court, the award shall be filed with the clerk, and a note thereof made in his register. After the expiration of five days from the filing of the award, upon the application of a party, and on filing an affidavit showing that notice of filing the award has been served on the adverse party, or his attorney, at least four days prior to such application, and that no order staying the entry of judgment has been served, the award shall be entered by the clerk in the judgment book, and shall thereupon have the effect of a judgment.

Award, how vacated in certain cases.

SEC. 612. The court, on motion, may vacate the award upon either of the following grounds, and may order a new hearing before the same arbitrators, or not, in its discretion:

First—That it was procured by corruption or fraud.

Second—That the arbitrators were guilty of misconduct, or committed gross error in refusing, on cause shown, to postpone the hearing, or refusing to hear pertinent evidence, or otherwise acted improperly, in a manner by which the rights of the party were prejudiced.

Third—The arbitrators exceeded their powers in making their award; or, that they refused or improperly omitted to consider a part of the matter submitted to them; or, that the award is indefinite or cannot be performed.

Court may modify award.

SEC. 613. The court may, on motion, modify or correct the award where it appears:

First—That there was a miscalculation in figures upon which it was made, or that there is a mistake in the description of some person or property therein.

Second—When a part of the award is upon matters not submitted, which part can be separated from other parts, and does not affect the decision on the matter submitted.

Third—When the award, though imperfect in form, could have been amended if it had been a verdict or the imperfection disregarded.

Decision on motion may be appealed from.

SEC. 614. The decision upon the motion shall be subject to appeal in the same manner as an order which is subject to appeal in civil actions; but the judgment entered before a motion made shall not be subject to apepal.

What recoverable on revocation.

SEC. 615. If a submission to arbitration be revoked, and an action be brought therefor, the amount to be recovered shall only be the costs and damages sustained in preparing for and attending the arbitration.

CHAPTER LXIV.

Of Evidence.

KNOWLEDGE OF THE COURT.

SECTION 616. What facts courts will asume to be true.

What facts courts will assume to be true.

SEC. 616. Courts take judicial notice of the following facts:

First—The true signification of all English words and phrases, and of all legal expressions.

Second—Whatever is established by law.

Third—Public and private official acts of the legislative, executive and judicial departments of this Territory and of the United States.

Fourth—The seals of all the courts of this Territory and of the United States.

Fifth—The accession to office and the official signatures and seals of office of the principal officers of government in the legislative, executive and judicial departments of this Territory and of the United States.

Sixth—The existence, title, national flag, and seal of every state or sovereign recognized by the executive power of the United States.

Seventh—The seals of courts of admiralty and maritime jurisdiction and notaries public.

Eighth—The laws of nature, measure of time, and the geographical divisions and political history of the world.

In all these cases the court may resort for its aid to appropriate books or documents of reference.

WITNESSES.

SECTION 617. Who are capable of being witnesses.
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619. Husband and wife cannot testify in certain cases.
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641. Proceedings on arrest of witness.

Who are capable of being witnesses.

SEC. 617. All persons, without exception, otherwise than is specified in the next two sections, who, having organs of sense, can perceive, and, perceiving can make known their perceptions to others, may be witnesses. Therefore, neither parties nor other persons who have an interest in the event of an action or proceeding are excluded; nor those who have been convicted of crime; nor persons on account of their opinions on matters of religious belief; although in every case the credibility of the witness may be drawn in question by the character of his testimony, or by evidence affecting his character for truth, honesty or integrity, or his motives, or by contradictory evidence, and the jury are the exclusive judges of his credibility.

Persons who cannot testify.

SEC. 618. The following persons cannot be witnesses:

First—Those who are of unsound mind at the time of their production for examination.

Second—Children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined or of relating them truly.

Third—Parties to an action or proceeding, or in whose behalf an action or proceeding is prosecuted, against an executor or an administrator, upon a claim or demand against the estate of the deceased.

Husband and wife cannot testify in certain cases.

SEC. 619. A husband cannot be examined for or against his wife, without her consent; nor a wife for or against her husband, without his consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other.

When attorneys cannot

SEC. 620. An attorney or counsellor shall not, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon, in the course of professional employment.

When a clergyman cannot.

SEC. 621. A clergyman or priest shall not, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

When a physician cannot.

SEC. 622. A licensed physician or surgeon shall not, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient.

When public officer cannot.

SEC. 623. A public officer shall not be examined as to communications made to him in official confidence, when the public interest would suffer by the disclosure.

Judge or juror may be a witness

SEC. 624. The judge himself, or any juror, may be called as a witness by either party; but in such cases it shall be in the discretion of the court or judge to order the trial to be postponed or suspended, and to take place before another judge or jury.

An interpreter may be summoned.

SEC. 625. When a witness does not understand and speak the English language, an interpreter shall be sworn to interpret for him. Any person, a resident of the proper county, may be summoned by any court or judge to appear before such court or judge to act as interpreter in any action or proceeding. The summons must be served and returned in like manner as a subpœna. Any person so summoned who fails to attend at the time and place named in the summons is guilty of a contempt.

SEC. 626. If a person offer himself as a witness, that is to be deemed a consent to the examination also of a wife, husband, attorney, clergyman, physician or surgeon on the same subject, within the meaning of the preceding sections.

Privilege may be waived, and witness must testify

Manner of Compelling the Attendance of Witnesses, and their Rights and Duties.

Subpœna defined.

SEC. 627. The process by which the attendance of a witness is required is a subpœna. It is a writ or order directed to a person and requiring his attendance at a particular time and place to testify as a witness. It may also require him to bring with him any books, documents, or other thing under his control which he is bound by law to produce in evidence. No person shall be required to attend as a witness before any court, judge, justice, or any other officer out of the county in which he resides, unless the distance be less than thirty miles from his place of residence to the place of trial.

How issued

SEC. 628. The subpœna shall be issued as follows:

First—To require attendance before a court, or at the trial of an issue therein, it shall be issued in the name of the court before which the attendance is required or in which the issue is pending.

Second—To require attendance out of court before a judge or justice, or any other officer authorized to administer oaths or take testimony in any matter under the laws of this Territory, it shall be issued by the judge, justice or other officer before whom the attendance is required.

Third—To require attendance before a commissioner appointed to take testimony by a court of any other State, Territory or county, it may be issued by any judge or justice of the peace in places within their respective jurisdictions, with like power to enforce attendance, and upon certificate of contumacy to said court to punish contempt of their process, as such judge or justice could excercise if the subpœna directed the attendance of the witness before their courts in a matter pending therein.

Service, how made.

SEC. 629. The service of a subpœna shall be made by reading the same to the witness, or by delivering a copy thereof to such witness, or by leaving such copy with some suitable person at the place of his abode, giving or offering to him at the same time, if demanded by him, the fees to which he is entitled for travel to and from the place designated and one day's attendance there. Such service may be made by any person; but when made by any other person than an officer authorized to serve the process, it shall be proved by the affidavit of the person making it.

How if witness be concealed.

SEC. 630. If a witness be concealed in a building or vessel, so as to prevent the service of a subpœna upon him, any court or judge or any officer issuing the subpœna may, upon proof by affidavit of the concealment, and of the materiality of the witness, make an order that the sheriff of the county serve the subpœna, and the sheriff shall serve it accordingly, and for that purpose may break into the building or vessel where the witness is concealed.

Person present compelled to testify.

SEC. 631. A person present in court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpœna issued by such court or officer.

Witnesses to attend with papers

SEC. 632. It shall be the duty of a witness duly served with a subpœna to attend at the time appointed, with any papers under his control required by the subpœna, to answer all pertinent and legal questions, and, unless sooner discharged, to remain until the testimony is closed.

When witness need not answer.

SEC. 633. A witness shall answer questions legal and pertinent to the matter in issue, though his answer may establish a claim against himself; but he need not give an answer which shall have a tendency to subject him to punishment for a felony, or need he give an answer which will have a direct tendency to degrade his character, unless it be to the very fact in issue or to a fact from which the fact in issue would be presumed.

Penalty for disobeying.

SEC. 634. Disobedience to a subpœna, or a refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished as a contempt by the court or officer issuing the subpena, or requiring the witness to be sworn; and if the witness be a party, his complaint or answer may be stricken out.

Forfeiture therefor.

SEC. 635. A witness disobeying a subpœna shall also forfeit to the party aggrieved the sum of one hundred dollars and all damages which he may sustain by the failure of the witness to attend, which forfeiture and damage may be recovered in a civil action.

Attachment when to issue.

SEC. 636. In case of failure of a witness to attend, the court or officer issuing the subpœna, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the sheriff of the county to arrest the witness and bring him before the court or officer where his attendance was required.

Proceedings if witness is prisoner.

SEC. 637. If the witness be a prisoner confined in jail or prison within this Territory, an order for his examination in the prison upon deposition, or for his temporary removal and production before a court or officer for the purpose of being orally examined, may be made as follows:

First—By the court itself in which the action or special proceeding is pending.

Second—By a judge of the Supreme Court, district court, or probate judge of the county where the action or proceeding is pending, if before a judge or other person out of court.

Must be on motion and affidavit.

SEC. 638. Such order can only be made upon motion by affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

How examined.

SEC. 639. If the witness be imprisoned in the county where the action or proceeding is pending, his production may be required. In all other cases his examination, when allowed, shall be taken upon deposition.

Exemption of witness from arrest, when.

SEC. 640. Every person who has been in good faith served with a subpœna to attend as a witness before a court, judge, commissioner, referee, or other person, in a cause where the disobedience of the witness may be punished as a contempt, shall be exonerated from arrest, in a civil action, while going to the place of attendance, necessarily remaining there, and returning therefrom.

Proceedings on arrest of witness.

SEC. 641. The arrest of a witness contrary to the last section shall be void; but an officer shall not be liable to the party for making the arrest in ignorance of the facts creating the exoneration, but shall be liable for any subsequent detention of the party, if such party claim the exemption, and make an affidavit stating:

First—That he has been served with a subpœna to attend as a witness before a court, officer, or other person, specifying the same, the place of attendance, and the action or proceeding in which the subpœna was issued.

Second—That he has not been thus served by his own procurement with the intention of avoiding an arrest.

Third—That he is, at the time, going to the place of attendance, or returning therefrom, or remaining there in obedience to the subpœna.

The affidavit may be taken by the officer, and shall exonerate him from liability for discharging the witness when arrested.

OF AFFIDAVITS.

SECTION 642. Before whom may be taken.
643. Before whom in another Territory or State.
644. Before whom in a foreign country.
645. How authenticated.

Before whom may be taken.

SEC. 642. An affidavit to be used before any court, judge or officer of this Territory may be taken before any judge or clerk of any court, or any justice of the peace or notary public in this Territory.

Before whom taken in another Territory or State.

SEC. 643. An affidavit taken in another State or Territory of the United States to be used in this Territory shall be taken before a commissioner appointed by the Governor of this Territory to take affidavits and depositions in such other State or Territory, or before the judge of a court of record having a seal.

Before whom in a foreign country.

SEC. 644. An affidavit taken in a foreign country to be used in this Territory shall be taken before an ambassador, minister or consul of the United States, or before any judge of a court of record having a seal in such foreign country, or before a commissioner of deeds appointed by the Governor.

How authenticated

SEC. 645. When an affidavit is taken before a judge of a conrt in another State or Territory, or a foreign country, the genuineness of the signature of the judge, the existence of the court, and the fact that such judge is a member thereof, shall be certified by the clerk of the court, under the seal thereof.

DEPOSITIONS TAKEN IN THIS TERRITORY.

SECTION 646. Deposition of witness in the Territory, when taken.
647. Notice, affidavit, place and time of taking.
648. Manner of taking and use of deposition.
649. When may be excluded.
650. May be read by either party at any time.

Deposition of witness in the Territory, when taken.

SEC. 646. The testimony of a witness in this Territory may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant, and in a special proceeding after a question of fact has arisen therein, in the following cases:

First—When the witness is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended.

Second—When the witness resides out the county in which his testimony is to be used.

Third—When the witness is about to leave the county where the action is to be tried, and will probably continue absent when the testimony is required.

Fourth—When the witness, otherwise liable to attend the trial, is nevertheless too infirm to attend.

Fifth—When the testimony is required upon a motion or in any other case where the oral examination of the witness is not required.

Notice, affidavit, place and time of taking.

SEC. 647. Either party may have the deposition taken of a witness in this Territory before any judge or clerk, or any justice of the peace or notary public, in this Territory, on serving upon the adverse party previous notice of the time and place of the examination, together with a copy of an affidavit showing that the case is one mentioned in the last section. Such notice shall be at least five days, and, in addition, one day for every twenty five miles of the distance of the place of examination from the residence of the person to whom the notice is given, unless, for a cause shown, a judge, by order, prescribe a shorter time. When a shorter time is prescribed, a copy of the order shall be served with the notice.

Manner of taking and use of depositions.

SEC. 648. Either party may attend such examination, and put such questions, direct and cross, as may be proper. The deposition, when completed, shall be carefully read to the witness, and corrected by him in any particular, if desired. It shall then be subscribed by the witness, certified by the judge or officer taking the deposition, enclosed in an envelope or wrapper, sealed, and directed to the clerk of the court in which the action is pending, or to such person as the parties in writing may agree upon, and either delivered by the judge or officer to the clerk or such person, or transmitted through the mail or by some private opportunity; and thereupon such deposition may be used by either party upon the trial or other proceeding against any party giving or receiving the notice subject to all legal exceptions. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the time of the examination. If the deposition be taken by reason of the absence, or intended absence, from the county of the witness, or because he is too infirm to attend, or by reason of his death, proof by affidavit or oral testimony shall be made at the trial that the witness continues absent, or infirm, or is deaf. The deposition thus taken may be also read in case of the death of the witness.

When may be excluded.

SEC. 649. Notwithstanding the taking of a deposition, it may be excluded from the case upon proof that sufficient notice was not given to the party against whom it is offered to enable him to attend the taking thereof, or that the taking was not in all respects fair.

May be read by either party at any time.

SEC. 650. When a deposition has been once taken, it may be read in any stage of the same action or proceeding by either party, and shall then be deemed the evidence of the party reading it.

DEPOSITIONS TAKEN OUT OF THIS TERRITORY.

SECTION 651. When may be taken.
652. Commission, how and to whom it may issue.
653. Interrogatories, how prepared and settled.
654. Authority and duties of commissioner.
655. When trial will not be postponed.
656. Deposition may be used by either party.

When may be taken.

SEC. 651. The testimony of a witness out of the Territory may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant, and in a special proceeding at any time after a question of fact has arisen therein.

Commission, how and to whom it may issue.

SEC. 652. The deposition of a witness out of this Territory may be taken upon commission issued from the court, under the seal of the court, upon an order of the judge or court, or probate judge, on the application of either party, upon five days previous notice to the other. If issued to any place within the United States, it may be directed to a person agreed upon by the parties, or, if they do not agree, to any judge or justice of the peace, or commissioner, selected by the officer issuing it. If issued to any country out of the United States, it may be directed to a minister, ambassador, consul, vice-consul, or consul agent of the United States in such country, or to any person agreed upon by the parties.

Interrogatories, how prepared and settled.

SEC. 653. Such proper interrogatories, direct and cross, as the respective parties may prepare, to be settled, if the parties disagee as to their form, by the judge or officer granting the order for the commission, at a day fixed in the order, may be annexed to the commission; or when the parties agree to that mode, the examination may be without written interrogatories.

Authority and duties of commissioner.

SEC. 654. The commission shall authorize the commissioner to administer an oath to the witness, and to take his deposition in answer to the interrogatories; or, when the examination is to be made without interrogatories, in respect to the question in dispute; and to certify the deposition to the court, in a sealed envelope, directed to the clerk, or other person designated or agreed upon, and forward to him by mail or other usual channel of conveyance.

When trial will not be postponed.

SEC. 655. A trial or other proceeding shall not be postponed by reason of a commission not returned, except upon evidence satisfactory to the court that the testimony of the witness is necessary, and that proper diligence has been used to obtain it.

Deposition may be used by either party.

SEC. 656. The deposition mentioned in this chapter may be used by either party on the trial or other proceeding against any other party giving or receiving the notice, subject to all just exceptions.

OF PROCEEDINGS TO PERPETUATE TESTIMONY.

SECTION 658. Manner of application for order.
659. Appointee of judge; authority of.
660. Manner of taking the deposition.
661. Papers filed *prima facie* evidence.
662. When the evidence may be produced.

SEC. 657. The testimony of a witness may be taken and perpetuated as provided in this act.

Manner of application for order.

SEC. 658. The applicant must produce to a district judge, or to a probate judge, a petition, verified by the oath of the applicant, stating:

First—That the applicant expects to be a party to an action in a court in this Territory, and, in such case, the names of the persons whom he expects will be adverse parties; or,

Second—That the proof of some fact is necessary to perfect the title to property in which he is interested, or to establish marriage, descent, heirship, or any other matter which it may hereafter become material to establish, though no suit may at the time be anticipated, or, if anticipated, he may not know the parties to such suit; and,

Third—The name of the witness to be examined, his place of residence, and a general outline of the facts expected to be proved.

The judge to whom such petition is presented must make an order allowing the examination and designating the officer before whom the same must be taken, and prescribing the notice to be given, which notice, if the parties expectant are known and reside in this Territory, must be personally served, and, if unknown, such notice must be served on the recorder of the county where the property to be effected by the evidence is situated, or the judge making the order resides, as may be directed by him, and by publication thereof in some newspaper, to be designated by the judge, for the same period required for the publication of summons. The judge must also designate in his order the recorder of the county to whom the depositions must be returned when taken.

Appointee of judge, authority of.

SEC. 659. The person appointed by the judge to take the depositions authorized, if a resident of this Territory, on receiving a copy of the order of the judge, and of the notice prescribed in the last action, with proof of its personal service or publication, or, if a resident without the Territory, on receiving the commission mentioned in the next section, with proof of like service of publication of the notice, to take the deposition of the witness named in the order of the judge, or in the commission, or, if more than one witness is thus named, of such of them as appears before him, at the time designated, and the taking of the same may be continued from time to time.

Manner of taking the deposition.

SEC. 660. The examination must be by question and answer, and if the testimony is to be taken in another Territory, it must be taken upon a commission to be issued by the judge allowing the examination, under the seal of the court of which he is judge, and upon interrogatories, to be settled in the same manner as in cases of deposition taken under commission in pending actions, unless the parties expectant, if known, otherwise agree. If such parties are unknown, notice of the settlement of the interrogatories shall be published in some newspaper for such time as the judge may designate. The deposition, when completed, must be carefully read to and subscribed by the witness, then certified by the officer or person taking the same, and shall then be sealed up and delivered or transmitted to the recorder of the county designated in the order of the judge allowing the examination, who shall file the same when received. The judge allowing the examination shall file with the clerk the order for the examination, the petition on which the same was granted, with proof of service of the order and notice.

Papers filed *prima facie* evidence.

SEC. 661. The petition and order, and papers filed by the judge, as provided in section 660, or a certified copy thereof, are *prima facie* evidence of the facts stated therein to show compliance with the provisions of this chapter.

When the evidence may be produced.

SEC. 662. If a trial be had between the parties named in the petition as parties expectant, or their successors in interest, or between any parties wherein it may be material to establish the facts which such depositions prove, or tend to prove, upon proof of the death or insanity of the witnesses, or that they cannot be found, or are unable by reason of age or other infirmity to give their testimony, the depositions, or copies thereof, may be used by either party, subject to all legal objections; but if the parties attended at the examination, no objection to the form of an interrogatory can be made at the trial, unless the same was stated at the examination.

ADMINISTRATION OF OATHS AND AFFIRMATIONS.

SECTION 663. Who may administer.
664. Form of ordinary oath.
665. What court may do in particular cases.
666. Same.
667. Witness may affirm or declare.

SEC. 663. Every court of this Territory, every judge or clerk of any court, every justice of the peace, and every notary public, and every officer authorized to take testimony, or to decide upon evidence in any proceeding, shall have power to administer oaths or affirmations. **Who may administer.**

SEC. 664. An oath or affirmation in an action or proceeding may be administered as follows, the person who swears or affirms expressing his assent when addressed in the following form: **Form of ordinary oath**

> You do solemnly swear [or affirm, as the case may be,] that the evidence you shall give in this issue [or matter], pending between ——— and ———, shall be the truth, the whole truth, and nothing but the truth, so help you God.

SEC. 665. Whenever the court before which a person is offered as a witness is satisfied that he has a peculiar mode of swearing connected with or in addition to the usual form of administration which, in his opinion, is more solemn or obligatory, the court may, in its discretion, adopt that mode. **What court may do in peculiar cases.**

SEC. 666. When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such. **Same.**

SEC. 667. Any witness who desires it, may, at his option, instead of taking an oath, make his solemn affirmation or declaration by assenting when addressed in the following form: "You do solemnly affirm [or declare]," as in section 664. **Witness may affirm or declare.**

APPROVED, *January* 15, 1875.

AN ACT

DEFINING THE JURISDICTION AND PRACTICE OF THE PROBATE COURTS OF THIS TERRITORY IN CIVIL AND CRIMINAL CASES.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Civil jurisdiction.
2. Rules of practice in criminal cases.
3. Jury in criminal cases.
4. Criminal jurisdiction.
5. Appeal in criminal cases.
6. Practice in civil cases.
7. Suit, how commenced.
8. Process, time to answer.
9. Monthly terms, always open.
10. Jury in civil cases.
11. Fees of jurors.
12. Witnesses' fees.
13. Who to serve process.
Publication of summons.
14. Fees of judge; clerk of the court.
15. Bond to be given.
16. Appeals, in what cases allowed.
17. Appeals, when and how taken.
18. Papers transmitted on appeal.
19. Trial in district court.
20. Proceedings after trial.
21. Appeals in certain cases, when tried anew.
22. All papers to be transmitted.
Execution from district court.
23. Transcript of docket in district court; execution may issue to other counties.
24. Repeal of other acts.
25. Repealing act of sixth session.

Civil jurisdiction.

SECTION 1. The probate courts of this Territory, in their respective counties, in addition to their probate jurisdiction, shall have concurrent civil jurisdiction with the district courts of this Territory to hear and determine civil cases wherein the damages or debt claimed does not exceed five hundred dollars, exclusive of interest, and concurrent jurisdiction in all cases with justices of the peace.

Rules of practice in criminal cases.

SEC. 2. The rules of practice and proceedings applicable to justice courts in criminal cases are hereby made applicable to the probate courts.

Jury in criminal cases.

SEC. 3. In the trial of criminal cases of which the probate courts have jurisdiction, the jury shall consist of twelve persons, who shall have the qualifications of electors; *provided*, that the defendant may, by consent, in open court, waive the right of trial by jury of twelve, and accept a number not less than six.

Criminal jurisdiction.

SEC. 4. That the probate court shall have concurrent juridiction with justices of the peace in such criminal cases arising under the laws of the Territory as do not require the intervention of a grand jury, and jurisdiction to examine persons charged with crime, and commit, discharge, or hold to bail. Each judge of the probate court shall be a conservator of the peace throughout his county.

Appeal in criminal cases.

SEC. 5. In all criminal cases an appeal may be taken from any order, judgment or decree, imposing a fine, imprisonment, or both, of said probate court to the district court in the same manner and by the same practice as is provided for appeals from justices' courts.

Practice in civil cases.

SEC. 6. The rules of practice in civil cases in the probate courts of this Territory shall be the same as the practice in the district courts, except in the matter of appeals to the district courts and other proceedings, as hereinafter provided.

Suit, how commenced.

SEC. 7. A civil suit shall be deemed to have commenced upon the filing of the complaint and the issuance of the summons; *provided*, that the summons may be issued at any time within six months from the filing of the complaint.

Process, time to answer.

SEC. 8. All process issued out of the probate courts shall be under the seal of said court, and the time within which a defendant is required to answer or demur, or both, shall be ten days, exclusive of the day of service of summons.

Monthly terms.

Always open.

SEC. 9. A regular term of the probate court shall be held at the county seat of each county, commencing on the fourth Monday of each month, for the transaction of such business in probate matters of which said court has jurisdiction; *provided*, that such court shall be open on all judicial and legal days for the commencement of and trial of civil actions, the same as in justices' courts.

Jury in civil cases. SEC. 10. Jurors in all civil cases and actions in the probate courts shall consist of twelve persons having the qualifications of jurors in the district courts; but the parties to the suit may, by written stipulation, or by agreement in open court, try their suit with a less number than twelve, and the verdict of such number shall be as valid as if rendered by a jury of twelve persons.

Fees of jurors. SEC. 11. Jurors in civil cases in the probate court shall be entitled to receive ten dollars per day for each day so engaged in the trial of a case, which shall be entered and taxed up as costs against the losing party.

Witness fees. SEC. 12. Witnesses in civil cases in the probate court shall be allowed two dollars per day for each day's actual attendance, and thirty cents per mile one way, which shall be taxed up against the losing party.

Who to serve process. SEC. 13. The sheriff, under sheriff, deputy sheriff, or any constable of the county, may serve and execute any process in civil actions issued out of the probate court; and any male citizen over twenty-one years of age may serve a summons or subpœna, and if specially appointed by the probate judge, may execute and serve any other process issued out of the probate court in civil actions; Publication of summons *provided*, in cases of non-residents, summons may be served by publication, as provided by the civil practice act applicable to the district court.

Fees of judge. SEC. 14. The same fees shall be allowed probate judges for services under this act as are allowed to justices of the peace for similar services; and for all official services not herein otherwise provided for, such fees as are or shall be by law allowed the clerk of the district Clerk of the court. court for similar services; that probate judges may be *ex officio* clerks of their own courts, or may appoint a clerk of their respective courts, who is authorized to perform all the duties of such clerk, and have the same fees as the probate judge.

Bond to be given. SEC. 15. Each probate judge in the Territory of Idaho, before exercising the powers and duties conferred by this act, shall execute an official bond in the sum of two thousand five hundred dollars, conditioned and executed as other official bonds under the laws of the Territory, such bond to be approved by the board of county commissioners and filed in the county recorder's office.

Appeals. in what cases allowed. SEC. 16. Appeals to the district court from orders and judgments rendered in the probate court in civil cases shall be allowed as hereinafter provided:

First—In a case tried by the court without a jury, when the amount of the judgment does not exceed the sum of fifty dollars, exclusive of costs.

Second—In cases tried by a jury, when the amount of the verdict and the order, judgment or decree does not exceed the sum of one hundred dollars, exclusive of costs.

Appeals, when and how taken.

SEC. 17. The party wishing to appeal, as provided in subdivisions one and two of section sixteen, shall file his notice of appeal within five days from the rendition of the judgment or order appealed from, and serve a copy on the opposite party; and shall, within ten days thereafter, file his undertaking in such sum as shall be fixed by the judge of the court, which undertaking shall conform in terms and conditions to undertakings on appeal from the district to the Supreme Court.

Papers transmitted on appeal.

SEC. 18. In appeals under subdivisions one and two of section sixteen the probate court shall transmit to the clerk of the district court the whole of the papers and pleadings, together with the judgment of the court below, and take a receipt from the clerk of the district court therefor, which shall be the only papers used on the trial in the district court.

Trial in district court.

SEC. 19. The cases on appeal as mentioned in subdivisions one and two of section sixteen shall be tried by the district court, and judgment rendered thereon. No jury shall be allowed to either party; and no appeals to the Supreme Court shall be allowed in such cases.

Proceedings after trial.

SEC. 20. If the judgment of the probate court shall be affirmed, modified or reversed, the papers in the case, together with the judgment of the court, shall be transmitted by the clerk of the district court to the probate court; *provided*, the costs of the clerk of the district court shall be first paid; *and provided further*, that the party in whose favor judgment shall have been rendered in the district court may pay the costs of having the papers transmitted, and recover the same with his other costs in the court below on execution against the judgment debtor, as provided in the practice of district courts.

Appeals in certain cases.

SEC. 21. Appeals shall be allowed in all civil cases where the amount of any final order, judgment or decree of the probate court exceeds the sum of one hundred dollars, exclusive of the costs and within the jurisdiction of the said probate court, to the district court, and which cases may be tried anew in said court, and in accordance with the rules of practice in said district court.

When tried anew.

All papers to be transmitted.

SEC. 22. When appeals are taken to the district court as provided in section twenty-one, the probate judge shall transmit all the papers, pleadings and depositions, if any, used on the trial in the court below to the clerk of the district court, and the same shall become a record in the said district court, and execution or executions to enforce the judgment, order or decree shall emanate in and from the district court; *provided*, the costs and the fees of the probate court shall be paid before the court or probate judge shall be required to transmit the same.

Execution from district court.

Transcript of docket in district court.

SEC. 23. The probate judge, on demand of the party in whose favor the judgment is rendered, shall give him a transcript thereof, which may be filed and docketed in the office of the clerk of the district court of the county where the judgment was rendered. The time of the receipt of the transcript by the clerk of the district court shall be noted by him thereon and entered in the docket, and from that time executions may be issued by the clerk of the district court on such judgment to the sheriff of any other county in the Territory in the same manner as upon judgments recovered in the higher courts.

Execution may issue to other counties.

Repeal of other acts.

SEC. 24. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Repealing act of sixth session.

SEC. 25. An act defining the jurisdiction and practice of the probate courts of this Territory in civil and criminal cases passed at the sixth session of the Legislative Assembly of the Territory of Idaho, and approved January 11, A. D. 1871, is hereby repealed.

APPROVED, *January* 15, 1875.

AN ACT

MAKING JUDGMENTS OBTAINED IN THE PROBATE COURTS OF THE TERRITORY OF IDAHO A LIEN UPON REAL ESTATE.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

Lien on real estate.

SECTION 1. That whenever a transcript of a judgment rendered by the probate courts of this Territory shall have been filed and docketed in the office of the district clerk, as provided by law, such judgment shall constitute a lien upon the real estate of the judgment debtor for the period of two years from the date of its filing and docketing.

SEC. 2. This act shall take effect from and after its passage.

APPROVED, *January* 15, 1875.

AN ACT

TO REGULATE THE SETTLEMENT OF THE ESTATES OF DECEASED PERSONS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

CHAPTER I.

Jurisdiction.

SECTION 1. Wills, when proved; letters testamentary, when granted.
2. Jurisdiction of estate of non-resident.

Wills, when proved; letters, when granted.

SECTION 1. Wills shall be proved, and letters testamentary or of administration shall be granted:

First—In the county of which the deceased was a resident at or immediately previous to his death, in whatever place his death may have happened.

Second—In the county in which he may have died, leaving estate therein, and not being a resident of the Territory.

Third—In the county in which any part of his estate may be, he having died out of the Territory, and not being a resident thereof at the time of his death.

Fourth—In the county in which any part of his estate may be, he not being a resident of the Territory, and not leaving estate in the county in which he died.

Fifth—In all other cases, in the county where application for letters is first made.

Non-residents, jurisdiction of estate of.

SEC. 2. When the estate of the deceased is in more than one county, he having died out of the Territory, and not having been a resident thereof at the time of his death, or, being such non-resident, and dying within the

Territory, and not leaving estate in the county where he died, the probate court of the county in which application is first made for letters testamentary or of administration shall have exclusive jurisdiction of the settlement of the estate.

CHAPTER II.

Proofs of Wills.

SECTION 3. Wills to be delivered to probate court.
5. Petition of executor; liability for neglect.
7. Petition for probate; order for production of wills.
10. Penalty for disobeying application for probate when made.
12. Time for proving will; citations.
15. Subpœnas for witnesses; hearing to prove wills.
17. Who may contest; probate when not contested.
19. Contest and proceedings thereon.
20. Subscribing witnesses to be examined.
21. Witneess when residing out of the county.
22. Testimony to be written; certificate of proof
24. Will and certificate to be filed; record to be evidence.
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Wills to be delivered to probate court.

SEC. 3. Any person having the custody of any will shall, within thirty days after he shall have knowledge of the death of the testator, deliver it into the probate court which has jurisdiction of the case, or to the person named in the will as executor. A failure to comply with the provisions of this section makes the person failing responsible for all damages sustained by any one injured thereby.

Executor to present will

SEC. 4. Any person named as executor in any will shall, within thirty days of the death of the testator, or within thirty days after he has knowledge that he is named executor, present the will, if in his possession, to the probate court.

Renuncia- of trust.

SEC. 5. If he intends to decline the trust, he shall, at the same time, file his renunciation in writing. If he shall neglect, for ten days, to file his renunciation, such neglect shall be equivalent to a renunciatiation, unless, for cause shown, the probate court or judge shall extend the time. If he intends to accept, he shall present, with the will, a petition setting forth the facts necessary to

Petition, what to contain.

give jurisdiction, and, when the same are known, the names, ages, and residences of the heirs and devisees of the deceased, and the probable value and character of the property of the estate, and praying that the will be admitted to probate, and that letters testamentary be issued to him. If the jurisdictional facts existing, but are not fully set forth in the petition, and the same shall be afterwards proved in the course of the administration, the probate of the will and the subsequent proceedings shall not, on account of such want of jurisdictional averments, be held void.

Neglect, liability for.

SEC. 6. Every person who shall neglect to perform any of the duties required in the preceding sections, without reasonable cause, shall be liable to every person interested in the will for the damages they may sustain in consequence of such neglect.

Petition for probate, order for production of will.

SEC. 7. Any person named as executor in a will which is not in his possession may present the petition to the probate court which has jurisdiction, praying that the person in possession of the will may be required to produce it, that it may be admitted to probate, and that letters testamentary may be issued to him.

SEC. 8. Any person having an interest in the will may, in like manner, present a petition praying that it may be required to be produced and admitted to probate.

Production of will, court may order.

SEC. 9. If it be alleged in any petition that any will is in the possession of a third person, and the court shall be satisfied that the allegation is correct, an order shall be issued and served upon the person having possession of the will, requiring him to produce it at a time to be named in the order.

Penalty for disobeying application for probate of will.

SEC. 10. If he has possession of the will, and neglects or refuses to produce it in obedience to the order, he may, by warrant from the court, be committed to the jail of the county and be kept in close confinement until he shall produce the will.

Court may issue order in vacation.

SEC. 11. Application for the probate of a will, and for the issuance of letters, may be made to the probate judge out of term time, or at chambers; and he may also, out of term time, or at chambers, issue all necessary orders and writs to enforce the production of any will. He may also appoint a special term for the hearing of any such application.

Proving wills; citations therefor.

SEC. 12. When any will shall have come into the possession of the probate court, and a petition for the probate thereof and for the issuance of letters testamentary, or letters of administration, with the will annexed, shall have been filed, the court or judge shall appoint a time for proving it, which shall not be less than ten nor more than thirty days, and shall cause notice to be given thereof by the clerk, by publication in some newspaper, if there is one printed in the county; if not, then by notices posted in public places in the county.

Citations to heirs.

SEC. 13. If the heirs of the testator reside in the county and Territory, the court shall also direct citations to be issued and served upon them to appear and contest the probate of the will at the time appointed.

SEC. 14. If the will be presented by any other person than the one named as executor, or if it be presented by one of several persons named as executors in the will, citations shall also be issued and served upon such person or persons, if resident within the county.

Subpœnas and hearing proof.

SEC. 15. The court shall also direct subpœnas to be issued to the subscribing witnesses to the will, if they reside in the county.

Court to hear proof of will.

SEC. 16. At the time apopinted, or at any time to which the hearing may be continued, upon proof being made, by affidavit or otherwise, to the satisfaction of the court, that notice has been given as required in the preceding sections, the court shall proceed to hear the testimony in proof of the will.

Who may contest; probate when not contested.

SEC. 17. Any person interested may appear and contest the will. If it appears that there are minors, or persons residing out of the county, who are interested in the estate, the court shall appoint some attorney to represent them.

When one witness sufficient.

SEC. 18. If no person shall appear to contest the probate of a will, the court may admit it to probate on the testimony of one of the subscribing witnesses only, if he shall testify that the will was executed in all particulars as required by law, and that the testator was of sound mind at the time of its execution.

Contest, proceedings thereon.

SEC. 19. If any person appears and contests a will, he shall file a statement in writing of the grounds of his opposition. When any issue or issues of fact shall be joined in the probate court respecting the competency of the deceased to make a last will and testament, or respecting the execution by the deceased of such last will and testament, under restraint, or under influence or fraudulent representation, or for any other cause affecting the validity of such will, the court shall proceed to try and determine such issue or issues of fact, and shall be governed therein by the same rules as provided by law for the trials of issues of fact in the district courts of the Territory; *provided, however*, that no trial by jury of such issue or issues of fact shall be allowed in said court. Issues of fact shall be deemed joined by the filing of the grounds of opposition with the clerk of the probate court.

Witnesses, examination of.

SEC. 20. If the will is contested, all the subscribing witnesses who are present in the county, and who are of sound mind, must be produced and examined, and the death, absence or insanity of any of them shall be satisfactorily shown to the court.

When other testimony admitted.

SEC. 21. If none of the subscribing witnesses reside in the county at the time appointed for proving the will, the court may admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will; and, as evidence of the execution, it may admit proof of the handwriting of the testator and of the subscribing witnesses, or any of them.

Testimony to be written.

SEC. 22. The testimony of each witness shall be reduced to writing and signed by him, and shall be deemed good evidence in any subsequent contest concerning the validity of the will or the sufficiency of the proof thereof, if the witness be dead or has permanently removed from this Territory.

Certificate of proof to be attached.

SEC. 23. If the court shall be satisfied, upon the proof taken and from the facts found by it, or by the jury, that the will was duly executed, and that the testator, at the time of the execution, was of sound and disposing mind, and not under restraint, undue influences or fraudulent misrepresentations, a certificate of the proof and the facts found, signed by the probate judge, and attested by the clerk, with the seal of the court, shall be attached to the will.

Will and certificate to be filed.

SEC. 24. The will and the certificate of the proof thereof, together with the testimony which has been taken, shall be filed by the clerk and recorded by him in a book to be provided for the purpose.

Record to be evidence.

SEC. 25. The record of the will, and the exemplification by the clerk in whose custody it may be, shall be received in evidence, and be as effectual in all cases as the original would be if proved.

Wills proved in other States probate of copy.

SEC. 26. All wills which shall have been duly proved and allowed in any other of the United States, or in any foreign country or state, may be allowed and recorded in the probate court of any county in which the testator shall have left any estate; *provided*, it has been executed in conformity with the laws of this Territory.

Foreign will, how presented.

SEC. 27. When a copy of the will, and the probate thereof, duly authenticated, shall be produced by the executor, or by any other person interested in the will, with a petition for letters, the same shall be filed in court, and the court or judge shall appoint a time of hearing, and notice shall be given in the same manner as in the case of an original will for probate.

Effect of such will.

SEC. 28. If, on hearing, it shall appear to the court that the instrument ought to be allowed as the will of the deceased, the authenticated copy shall be admitted to probate and recorded, the same as in the case of other wills; and the will shall have the same force and effect as if it had been originally proved and allowed in the same court.

Copy to be recorded.

SEC. 29. If, on hearing, it shall appear to the court that the instrument ought to be allowed as the will of the deceased, a copy shall be filed and recorded, and the will shall have the same force and effect as if it had been originally proved and allowed in the same court.

Contesting will after probate, hearing proof.

SEC. 30. When a will has been admitted to probate, any person interested may, at any time within one year after such probate, contest the same or the validity of the will. For that purpose he shall file in the court before which the will was proved a petition in writing, containing his allegations against the validity of the will or against the sufficiency of the proof, and praying that the probate may be revoked.

Citation to executors and legatees

SEC. 31. Upon the filing of the petition, a citation shall be issued to the executors who have taken upon them the execution of the will, or to the administrators, with the will annexed, and to all the legatees named in the will residing in the Territory, or to the guardians if any of them are minors, or their personal representatives if any of them are dead, requiring them to appear before the court on some day of a regular term therein specified to show cause why the probate of the will should not be revoked.

Court to hear proofs.

SEC. 32. At the time appointed for showing cause, or at any time to which the hearing shall be continued, personal service of the citations having been made upon any person named therein, the court shall proceed to hear the proofs of the parties. If any devisees or legatees named in the will shall be minors, and have no guardians, the court shall appoint some attorney to represent them.

Revoking probate, effect of.

SEC. 33. If, upon the hearing of the proofs of the parties, the court shall decide that the will is, for any reason, invalid, or that it is not sufficiently proved to have been the last will of the testator, the probate shall be annulled and revoked.

Powers of executor to cease, when

SEC. 34. Upon the revocation being made, the powers of the executor or administrator, with the will annexed, shall cease; but such executor or administrator shall not be liable for any act done in good faith previous to the revocation.

Fees and costs, probate when.

SEC. 35. The fees and expenses shall be paid by the party contesting the will or the probate, if the will or probate be confirmed. If the probate be revoked, the party who shall have resisted the revocation shall pay the costs and expenses of the proceedings, or the same shall be paid out of the property of the deceased, as the court shall direct.

Validity of will exclusive, when.

SEC. 36. If no person shall, within one year after the probate, contest the same or the validity of the will, the probate of the will shall be conclusive, saving to infants, married women and persons of unsound mind a like period of one year after their respective disabilities are removed.

Lost wills, how proved

SEC. 37. Whenever any will shall have been lost or destroyed, by accident or design, the probate court shall have power to take proof of the execution and validity of the will, and to establish the same, notice to all persons interested having been first given, as prescribed in regard to proofs of wills in other cases. All the testimony given shall be reduced to writing, and signed by the witnesses.

When not to be proved.

SEC. 38. No will shall be allowed to be proved as a lost or destroyed will unless the same shall be proved to have been in existence at the time of the death of the testator, or be shown to have been fraudulently destroyed in the lifetime of the testator, nor unless its provisions shall be clearly and distinctly proved by at least two credible witnesses.

Lost wills, evidence of recorded.

SEC. 39. When any will shall be established, the provisions thereof shall be distinctly stated and certified by the probate judge, under his hand and the seal of his court; and the certificate, together with the testimony upon which it is founded, shall be recorded as other wills are required to be recorded, and letters testamentary or of administration, with the will annexed, shall be issued thereon, in the same manner as upon wills produced and duly proved.

Restraining executors and administrators.

SEC. 40. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration be granted on the estate of the testator, or letters testamentary of any previous will of the testator be granted, the court shall have authority to restrain the administrators or executors so appointed from any acts or proceedings which would be injurious to the legatees or divisees claiming under the lost or destroyed will.

CHAPTER III.

Letters Testamentary and of Administration, and Bonds of Executors and Administrators.

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SEC. 41. When any will shall have been proved and allowed, the probate court shall issue letters thereon to the persons named in the will as executors who are competent to discharge the trust, and who shall appear and qualify. **Letters, etc, to be issued**

Executors, who competent; letters with will annexed.

SEC. 42. No person shall be deemed competent to serve as executor who at the time the will is proved shall be:

First—Under the age of majority; or,

Second—Who shall have been convicted of an infamous crime; or,

Third—Who, upon proof, shall be adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence or want of understanding and integrity.

If any such person be named as the sole executor in any will, or if all the persons named as executors are incompetent, or shall renounce or fail to apply for letters, or to appear and qualify, letters of administration, with the will annexed, shall be issued.

Objections to executor; unmarried executrix.

SEC. 43. Any persons interested in a will may file objections in writing to the granting of letters testamentary to the persons named as executors, or any of them, and the objections shall be heard and determined by the court. A petition may also be filed for the issuance of letters of administration with the will annexed.

Marriage of executrix.

SEC. 44. When an unmarried woman who shall have been appointed executrix shall marry, her marriage shall extinguish her authority. When a married woman is nominated executrix, she may be appointed and serve in every respect as if she were a *femme sole*.

Executor of executor.

SEC. 45. No executor of an executor shall, as such, be authorized to administer on the estate of the first testator; but, on the death of the sole or surviving executor of any last will, letters of administration, with the will annexed, of the estate of the first testator left unadministered shall be issued.

Letters when executor is a minor.

SEC. 46. When a person under the age of twenty-one years shall be named executor, letters of administration, with the will annexed, shall be granted during the minority of the executor; unless there is another executor who shall accept the trust and qualify, shall have letters testamentary, and shall administer the estate until the minor shall arrive at full age, when he may be admitted as joint executor.

Powers of administrator; two executors.

SEC. 47. When all the executors named shall not be appointed by the court, such as are appointed shall have the same authority to perform every act and discharge every trust required by the will, and their acts shall be as effectual for every purpose as if all were appointed and should act together. When there are two executors or administrators, the acts of one alone shall be effectual if the other is absent from the Territory, or from any cause is laboring under legal disability from serving, as if he should have given his co-executor or co-administrator authority, under seal, to act alone, or for both; and when there are more than two executors, the act of a majority shall be sufficient.

Authority of administrator with will annexed.

SEC. 48. Administrators, with the will annexed, shall have the same authority as the executor named in the will would have had, and their acts shall be as effectual for every purpose.

SEC. 49. Letters testamentary and of administration with the will annexed, shall be signed by the clerk, and be under the seal of the court.

Form of letters testamentary.

SEC. 50. Letters testamentary may be in substantially the following form:

THE TERRITORY OF IDAHO, }
County of ——— }

THE LAST WILL *of* A. B., *deceased* (a copy of which is hereto annexed), *having been proved and recorded in the Probate Court of the County of* ———

C. D., who is named therein, is hereby appointed Executor.

SEAL.

WITNESS, G. H., *Clerk of the Probate Court of the County of* ———, with the seal of the court affixed, the ——— day of ———, A. D. 18——

By order of the Court,
G. H., *Clerk.*

Form of letters of administration with will annexed.

SEC. 51. Letters of administration, with the will annexed, may be substantially in the following form:

THE TERRITORY OF IDAHO, }
County of ——— }

THE LAST WILL *of* A. B., *deceased* (a copy of which is hereto annexed), *having been proved and recorded in the Probate Court of the county of* ———, *and there being no executor named in the will* (or as the case may be):

C. D. is hereby appointed as Administrator with the will annexed.

SEAL.

WITNESS, G. H., *Clerk of the Probate Court of the County of* ———, with the seal of the court affixed, the ——— day of ———, A. D. 18——

By order of the Court,
G. H., *Clerk.*

Estates intestate, who entitled to.

SEC. 52. Administration of the estate of a person dying intestate shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order:

First—The surviving husband or wife, or some person whom he or she may request to have appointed.

Second—The children.

Third—The father or mother.

Fourth—The brothers.

Fifth—The sisters.

Sixth—The grandchildren.

Seventh—Any one of the children entitled to share in the distribution of the estate.

Eighth—The creditors.

Ninth—Any of the kindred not above enumerated within the fourth degree of consanguinity.

Tenth—Any person or persons legally competent; *provided*, that when there was any partnership existing between the intestate at the time of his death and any other person, the surviving partner shall in no case be appointed administrator of the estate of such intestate.

Who to have preference. SEC. 53. When there shall be several persons claiming and equally entitled to the administration, males shall be preferred to females, and relatives of the whole blood to those of the half blood.

Persons equally entitled. SEC. 54. When there are several persons equally entitled to the administration, the court may, in its discretion, grant letters to one or more of them.

Administrator, who may act. SEC. 55. No person shall be entitled to letters of administration who shall be:

First—Under the age of majority; or,

Second—Who shall have been convicted of an infamous crime; or,

Third—Who, upon proof, shall be adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of integrity or understanding.

Marriage of administratrix, effect of. SEC. 56. When any unmarried woman who shall have been appointed administratrix shall marry, her marriage shall extinguish her authority.

Minor administrator, letters how applied for. SEC. 57. If any person entitled to administration shall be a minor, administration shall be granted to his or her guardian.

Application for letters of administration, how made. SEC. 58. Application for letters of administration shall be made by petition in writing, signed by the applicant or his counsel, and filed by the clerk of the court. The petition must state the facts essential to give the court jurisdiction of the case, and, when the same is known to the administrator or brought to his knowledge, he shall state the names, ages, and residences of the heirs of the deceased, and the value and character of the property. If the jurisdictional facts exist, but are not fully set forth in the petition, and the same shall be afterwards proved in the course of the administration, the decree of administration and the subsequent proceedings shall not, on account of such want of jurisdictional averment, be held void.

Letters, when granted.

SEC. 59. Letters of administration shall be granted at a regular term of the court, or at chambers at a special term appointed by the judge for the hearing of the application.

Notice of petition, how given.

SEC. 60. When any petition praying for letters of administration has been filed, the clerk shall give notice thereof by causing notices to be posted up in at least three public places in the county, one of which shall be at the place where the court was held, and the clerk or judge of said court shall enclose one certified copy of the petition, and transmit the same by mail to the heirs of said estate if the whereabouts of said heirs is known to the clerk or judge of said county. The notice shall state the time of the decease, the name of the applicant, and the term of the court at which the application will be heard. Such notice shall be given at least twenty days before the hearing.

Who may contest; notice and evidence.

SEC. 61. Any person interested may contest the application by filing a written opposition thereto on the ground of the incompetency of the applicant, or may assert his own rights to the administration, and pray that letters be issued to himself, after proper petition filed and due notice given.

Court to hear proofs.

SEC. 62. On the hearing, it being first proved that the notice has been given according to law, the court shall proceed to hear the allegations and proof of the parties, and to order the issuance of letters of administration, as the case may require.

Record of notice when evidence.

SEC. 63. An entry in the minutes of the court that proof was made, and that notice had been given according to law, shall be *prima facie* evidence of the fact of such notice.

When letters of administration may be granted.

SEC. 64. Letters of administration may be granted to any applicant, though it appears that there are other persons having better rights to the administration, when such persons fail to appear and claim the issuance of letters to themselves.

Proof of death of intestate.

SEC. 65. Before letters of administration shall be granted on the estate of any person who is represented to have died intestate, the fact of his having died intestate shall be proved by the testimony of the applicant, and the court may also examine any other person concerning the time, place and manner of the death, the place of his residence at the time of his death, the value and character of his property, and whether or not the deceased left any will, and may compel any person to attend as a witness for that purpose.

How administration may be granted to one or more

SEC. 66. Administration may be granted to any one or more competent persons, although not entitled to the same, at the request of the person entitled to be joined with such person. The request shall be in writing, and shall be filed in the court. When the person entitled is a non-resident of the Territory, affidavits, or depositions taken *ex parte* before any officer authorized by the laws of the Territory or State where the same are taken to take acknowledgments and administer oaths, may be received as *prima facie* evidence of the identity of the party, if free from reasonable suspicion, and the fact be established to the satisfaction of the court.

Petition for revocation.

SEC. 67. When letters of administration have been granted to any other person than the surviving husband or wife, the child, the father, mother, or the brother of the intestate, or any one of them, may obtain the revocation of the letters by presenting to the probate court a petition praying the revocation, and that letters of administration be issued to him or her.

Citation to administrator.

SEC. 68. When any such petition is filed, the clerk shall issue a citation to the administrator to appear and answer the petition at the next regular term of the court, or at any special term that may be appointed by the judge.

Court to hear proofs.

SEC. 69. At the time appointed, the citation having been duly served and returned, the court shall proceed to hear the allegations and proofs of the parties; and if the right of the applicant is established, and he or she be competent, letters of administration shall be granted to the applicant, and the letters of the former administrator be revoked.

Hearing, survivors may obtain.

SEC. 70. The surviving husband or wife, when letters of administration have been granted to a child, to the father, or to a brother of the intestate, or any of such relatives when letters have been granted to any other of them, may assert his or her prior right, and obtain letters of administration, and have the letters before granted revoked in the manner prescribed in the three preceding sections.

Form of letters of administration.

SEC. 71. Letters of administration shall be signed by the clerk, and be under the seal of the court, and may be substantially in the following form :

TERRITORY OF IDAHO, }
County of ——— }

C. D. is hereby appointed Administrator of the estate of *A. B.*, deceased.

SEAL.

WITNESS, G. H., *Clerk of the Probate Court of the County of* ———, with the seal of the court affixed, the ——— day of ———, A. D. 18——

By order of the Court,
G. H., *Clerk.*

Oath of administrator and executor.

SEC. 72. Before letters testamentary or of administration shall be issued to the executor or administrator, he shall take and subscribe an oath or affirmation, before the probate judge or clerk, that he will perform, according to law, the duties of executor or administrator. Said oath shall be attached to the letters. All letters testamentary and of administration issued to, and all bonds executed by executors or administrators, with the affidavits and certificates thereon, as provided for in this act, shall be forthwith recorded by the clerk of the court having jurisdiction of the estate, respectively, in a book to be kept by him in his office for that purpose; and the said records and duly certified copies taken therefrom shall have the same force and effect in all cases whatever as the original papers would have.

Bond of administrator and executor.

SEC. 73. Every person to whom letters testamentary or of administration shall have been directed to issue shall, before receiving the letters, execute a bond to the people of the Territory of Idaho, with two or more sufficient sureties, to be approved by the probate judge. In form the bond shall be joint and several, and the penalty shall not be less than twice the value of the personal property belonging to the estate, which value shall be ascertained by the probate judge by the examining on oath of the party applying and of any other person he may think proper to examine. The probate judge shall require an additional bond whenever the sale of any real estate belonging to an estate is ordered by him. The bond shall be conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law. He shall also require bond and sufficient surety for the annual rents, issues and profits of all real estate in his charge, as such executor or administrator, to be approved by the probate judge.

Separate bonds.

SEC. 74. When two or more persons shall be appointed executors or administrators, the probate judge shall take a separate bond from each of them.

Bond may be sued upon.

SEC. 75. The bond shall not be void upon the first recovery, but may be sued upon, from time to time, by any person aggrieved, in his own name, until the whole penalty is exhausted.

Sureties, how to justify.

SEC. 76. In all cases where the bonds are required by this act, the sureties must justify, on oath, before the judge or clerk of some court having a seal, to the effect that they are householders, resident within the county where such sureties justify, and are worth the amount justified to, over and above their debts and liabilities, exclusive of property exempt from execution. Such justification shall be in writing, signed by the person justifying, and certified to by the judge or clerk who takes the same, and attached to and filed with the bond. Whenever the penal sum of the bond amounts to more than two thousand dollars, the sureties may be allowed to become liable for portions of said penal sum, making in the aggregate the whole penal sum of such bond.

Doubtful sureties, additional may be required.

SEC. 77. Before the probate judge approves of any bond required by said act, he may, of his own motion, or at any time after the approval of such bond, upon the motion of any person interested in said estate, supported by affidavit, that any one or all of such sureties are not worth as much as they have justified to, order a citation to issue, requiring such surety or sureties to appear before him, at a particular time and place, to testify touching his or their property and its value; and the judge shall, at the time such citation is issued, cause a notice to be issued to the executor or administrator, and requiring his appearance at the return of the citation. Upon the return of the citation, the judge shall examine, under oath, the sureties and such witnesses as may be produced touching the property of such sureties and its value; and if, upon such investigation, the judge is satisfied that the bond is insufficient, he may require sufficient additional security within such time as may be reasonable—not less than five days.

Insufficient security, cause for change.

SEC. 78. If sufficient security is not given within the time fixed by the judge's order, the right of such executor or administrator shall cease, and the person next entitled to the administration on the estate who will execute a sufficient bond shall be appointed to the administration.

Letters without bond, security may be required.

SEC. 79. When it is expressly provided in the will of a testator that no bond shall be required of the executor, letters testamentary may issue without any bond having been given; but an executor to whom letters have been issued without bond may at any time afterward, whenever it may be shown from any cause to be necessary or proper, be required to appear and file a bond, as in other cases.

Additional sureties in case of insolvency.

Sec. 80. Whenever any person interested in any estate shall discover that the sureties of any executor or administrator have become, or are becoming insolvent; that they have removed, or are about to remove from the Territory; or that from any other cause the bond is insufficient, he may apply by petition to the probate judge, and require that further security be given.

Insolvency; citation of principal and sureties

Sec. 81. If the probate judge shall be satisfied that the matter requires investigation, a citation shall be issued to the executor or administrator requiring him to appear, at a time and place to be therein specified, to show cause why he should not give further security. The citation shall be served personally on the executor or administrator at least five days befor the return day. If he shall have absconded, or cannot be found, it may be served by leaving a copy of it at his last place of residence.

Court to hear proofs of.

Sec. 82. On the return of the citation, or at such other time as the judge shall appoint, he shall proceed to hear the proofs and allegations of the parties. If it shall satisfactorily appear that the security is from any cause insufficient, he may make an order requiring the executor or administrator to give further security, or file a new bond, in the usual form, within a reasonable time, not exceeding five days.

Letters may be revoked.

Sec. 83. If the executor or administrator neglect to comply with the order within the time prescribed, the judge shall, by order, revoke his letters, and his authority shall therefrom cease.

Committing waste, additional security may be required.

Sec. 84. When a petition is presented praying that an executor or administrator be required to give further security, and when it shall also be alleged, on oath or affirmation, that the executor or administrator is wasting the property of the estate, the judge may, by order, suspend his powers until the matter can be heard and determined.

Further security without application.

Sec. 85. When it shall come to his knowledge that the bond of any executor or administrator is from any cause insufficient, it shall be the duty of the probate judge, without any application, to cause him to be cited to appear and show cause why he should not give further security, and to proceed thereon, as upon the application of any person interested.

Sureties desiring release, when not liable.

Sec. 86. When either or all of the sureties of any executor or administrator shall desire to be released from responsibility on account of his future acts, they may make application to the probate court or judge for relief, and the judge or court shall cause a citation to the executor or administrator to be issued and served requiring him to appear at a time and place to be therein specified, and to give other security, which citation shall be served personally.

Released sureties, liability of.

SEC. 87. If new sureties be given to the satisfaction of the judge, he may thereupon make an order that the surety or sureties who applied for relief shall not be liable, on their bond, for any subsequent act, default, or misconduct of the executor or administrator.

Failure to find new sureties, additional when made.

SEC. 88. If the executor or administrator neglect or refuse to give new sureties to the satisfaction of the judge, on the return of the citation, or within such reasonable time as the judge shall allow, not exceeding five days, unless the surety or sureties making the application shall consent to a longer extension of time, the court or judge shall, by order, revoke the letters granted.

Applications may be heard in vacation.

SEC. 89. The applications authorized by the nine preceding sections of this act may be heard out of term time. All orders made therein shall be made upon the minutes of the court.

Special administrator who may be appointed.

SEC. 90. When there shall be a delay in granting letters testamentary or of administration from any cause, or when such letters shall have been granted irregularly, or no sufficient bond shall have been filed, as required by law, or when no application shall have been made for such letters, the probate judge shall appoint a special administrator to collect and take charge of the estate of the deceased, in whatever county or counties the same may be found, and to exercise such other powers as may be necessary for the preservation of the estate.

Special administrator, how appointed.

SEC. 91. The appointment may be made out of term time, and without notice, and shall be made by entry upon the minutes of the court, which shall specify the powers to be exercised by the administrator. Upon such order being entered, and after the person appointed has given bond, the clerk shall issue letters of administration to such person in conformity with the order.

Who have preference.

SEC. 92. In making the appointment of a special administrator, the probate judge shall give preference to the persons entitled to letters testamentary or of administration, but no appeal shall be allowed from the appointment.

Bond of special administrator.

SEC. 93. Before any letters shall issue to any special administrator, he shall give bond in such sum as the probate judge may direct, with sureties to the satisfaction of said judge, conditioned for the faithful performance of his duties, and he shall take the usual oath and have the same endorsed on his letters.

Duties of special administrator

SEC. 94. The special administrator shall collect and preserve for the executor or administrator all the goods, chattels and debts of the deceased; all incomes, rents, issues and profits, claims and demands of the estate; shall take charge and management of, enter upon, and preserve from damage, waste and injury the real estate; and for any such and all necessary purposes may commence and maintain or defend suits and other legal proceedings as an administrator. He may sell such perishable estate as the probate court may order to be sold, and may exercise such other powers as may have been conferred upon him by his appointment; but in no case shall he be liable to an action by any creditor or any claimant against the estate, or pay any claim against the deceased.

Duties of, when to cease.

SEC. 95. When letters testamentary or of administration on the estate of the deceased have been granted, the powers of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator all the property and effects of the deceased in his hands; and the executor or administrator shall be permitted to prosecute to final judgment any suit commenced by the special administrator.

Account and oath of.

SEC. 96. The special administrator shall also render an account, on oath, of his proceedings in like manner as other administrators are required to do; and shall also render such account when so ordered by the court at any time.

Special administrator to be appointed in case of death of executor.

SEC. 97. Whenever an executor or administrator shall die, or his letters be revoked, and the circumstances of the estate require the immediate appointment or an administrator, the probate court may appoint a special administrator, as provided in the preceding sections.

Incompetency of one of several executors.

SEC. 98. In case any one of several executors or administrators to whom letters shall have been granted shall die, become lunatic, be convicted of an infamous offense, or otherwise become incapable of executing the trust, or in case letters testamentary or of administration shall be revoked or annulled, according to law, with respect to any one executor or administrator, the remaining executor or administrator shall proceed and complete the execution of the will or administration.

Incompetency of all executors.

SEC. 99. If all such executors or administrators shall die or become incapable, or the power and authority of all of them shall be revoked according to law, the probate court shall issue letters of administration, with the will annexed, or otherwise, to the widow or next of kin, or others, in the same manner as is directed in relation to original letters of administration. The administrators so appointed shall give bond in the like penalty, with like sureties and conditions as hereinbefore required of administrators, and shall have the like power and authority.

Proof of wills after granting letters.

SEC. 100. If, after granting letters of administration on the grounds of intestacy, a will of the deceased shall be duly proved and allowed by the court, the letters of administration shall be revoked, and the power of the administrator shall cease, and he shall render an account of his administration within such time as the court shall direct.

Executor or administrator to recover all effects

SEC. 101. In such case the executor of the will or the administrator, with the will annexed, shall be entitled to demand, sue for, and collect all the rights, goods, chattels and effects of the deceased unadministered, and shall be admitted to prosecute to final judgment any suit commenced by the administrator before the revocation of his letters of administration.

Executor or administrator may resign.

Proviso defining his studies before resigning.

Special administrator may be appointed in cases of resignation.

SEC. 102. Any executor or administrator may at any time, by writing, filed in the probate court, resign his appointment; *provided*, he shall first settle his accounts and deliver up all the estate to such person as may be appointed by the court. If, however, by reason of any delays in such settlement and delivering up of the estate, or for any other cause, the circumstances of the estate or the rights of those interested therein require it, the court may, at any time before the settlement of accounts and delivering up of the estate is completed, revoke the letters of such executor or administrator, and appoint in his stead an administrator, either special or general, in the same manner as is directed in relation to original letters of administration. The liability of the outgoing executor or administrator, or of the sureties on his bond, shall not be in any manner discharged, released, or affected by such appointment or resignation.

Acts to be valid.

SEC. 103. All acts of an executor or administrator, as such, before the revocation of his letters testamentary or of administration, shall be as valid, to all intents and purposes, as if such executor or administrator had continued lawfully to execute the duties of his trust.

Record to be proof of appointment, when.

SEC. 104. A transcript from the minutes of the court, showing the appointment of any person as executor or administrator, together with the certificate of the clerk, under his hand and the seal of the court, that such person has given bond and been qualified, and that letters testamentary or of administration have been issued to him and have not been revoked, shall have the same effect in evidence as the letters themselves.

Probate judge not to act in certain cases.

SEC. 105. No probate judge shall admit to probate any will, or grant letters testamentary or of administration, in any case where he shall be interested as next of kin to the deceased, or as a legatee or devisee under the will, or where he shall be named as executor or trustee in the will or shall be a witness thereto.

In such cases power to be vested in judge of adjoining county.

SEC. 106. When any probate judge who would otherwise be authorized to act shall be precluded from acting from the cause mentioned in the preceding section, or when he shall be in any manner interested, upon a representation, and due proof thereof, to the probate judge of an adjoining county, such judge shall be vested with all the powers and authority of the proper probate judge in relation to the proof of any will and the granting of letters testamentary or of administration thereon, and the granting of letters of administration in cases of intestacy, and shall retain jurisdiction as to all subsequent proceedings in regard to the estate.

CHAPTER IV.

The Inventory and Collection of the Effects of Deceased Persons.

SECTION 107. Inventory, etc., to be returned ; appraisement, how made.
109. Appraisers to take oath ; inventory, what to contain.
111. Debtor as executor, effect of.
112. Executor, effect of discharge of.
113. Inventory to be signed and sworn to, by whom.
114. Inventory, neglect to return.
115. Inventory of, after discovered property.
116. Executor, etc., rights of; debts of estate, how paid.
118. Embezzling or aliening estate before granting letters.
119. Proceedings on information of embezzlement.
120. Persons refusing to appear when cited for examination.
121. Account; person intrusted with estate may be cited.

Inventory of estate.

SEC. 107. Every executor or administrator shall make and return to the court, at its first term after his appointment, a true inventory and appraisement of all the estate of the deceased which shall have come to his possession or knowledge.

Appraisers. SEC. 108. For the purpose of making the appraisement the court or judge shall appoint three disinterested persons, any two of whom may act, and who shall be entitled to receive a reasonable compensation for their services, to be allowed by the court. Their compensation. Their compensation, as allowed, shall be in the form of a bill of items of their services, including all necessary disbursements, which shall be sworn to by them and filed with the inventory, and shall not exceed four dollars per day. Estate in other county how appraised. If any part of the estate shall be in any other county than that in which letters issued, appraisers thereof may be appointed, either by the probate judge having jurisdiction of the estate or by the probate judge of such other county, on request of the judge having jurisdiction.

Oath of appraisers. SEC. 109. Before proceeding to the execution of their duty, the appraisers, before any officer authorized to administer oaths, shall take and subscribe an oath, to be attached to the inventory, that they will truly, honestly and impartially appraise the property which shall be exhibited to them according to the best of their knowledge and ability. Appraisement how made. They shall then proceed to estimate and appraise the property. Each article shall be set down separately, with the value thereof in dollars and cents, in figures, opposite to the articles respectively. The inventory shall contain all the estate of the deceased, real and personal; a statement of all debts, partnerships and other interests; bonds, mortgages, notes and other securities for the payment of money belonging to the deceased, specifying the name of the debtor in each security, the date, the sum originally payable, the endorsements thereon, if any, with their dates, and the sum which, in the judgment of the appraisers, may be collectable on each debt, interest or security. The inventory shall show, so far as the same can be ascertained by the executor or the administrator, what portion of the property is community property, and what portion is the separate property of the deceased.

Inventory what to contain. SEC. 110. The inventory shall also contain an account of all moneys belonging to the deceased, which shall have come to the hands of the executor or administrator; and if more shall have come to his hands, the fact shall be so stated in the inventory.

Executor not exempt from claims of estate. SEC. 111. The naming any person executor in a will shall not operate as a discharge of any just claim which the testator had against the executor, but the claim shall be included in the inventory, and the executor shall be liable for the same as for so much money in his hands at the time the debt or demand becomes due.

Bequest in a will how construed.

Sec. 112. The discharge or bequest in a will of any debt or demand of the testator against any executor named in his will, or against any other person, shall not be valid against the creditors of the deceased, but shall be construed only as a specific bequest of such debt or demand, and the amount thereof shall be inlcuded in the inventory, and shall, if necessary, be applied in the payment of his debts. If not necessary for that purpose, it shall be paid in the same manner and proportion as other specific legacies.

Inventory how signed and sworn to.

Sec. 113. The inventory shall be signed by the appraisers, and the executor or administrator shall take and subscribe an oath, before the probate judge or the clerk of the county, or any officer authorized to administer oaths, that the inventory contains a true statement of all the estate of the deceased which has come to their knowledge and possession, and particularly of all money belonging to the deceased, and all just claims of the deceased against the executor or administrator. The oath shall be endorsed upon or annexed to the inventory.

Endorsement of oath.

Penalty for neglect to return inventory.

Sec. 114. If any executor or administrator shall neglect or refuse to return the inventory within the time prescribed, or within such further time (not exceeding one month) as the court or judge shall for reasonable cause allow, the court may, with or without further notice, revoke the letters testamentary or of administration, and the executor or administrator shall be liable on his bond for any injury sustained by the estate, or any person interested therein, by his neglect.

Additional inventory.

Sec. 115. Whenever any property not mentioned in any inventory that shall have been made shall come to the possession or knowledge of an executor or administrator, he shall cause the same to be appraised in the manner prescribed in this act, and an inventory to be returned within one month after the discovery thereof; and the making of such inventory may be enforced after notice by attachment or removal from office.

Executor or administrator to have possession of property and receive profits.

Sec. 116. The executor or administrator shall have a right to the possession of all the real as well as personal estate of the deceased, and may receive the rents and profits of the real estate until the estate shall be settled or until delivered over, by order of the probate court, to the heirs or devisees, and shall keep in good tenantable repair all houses, buildings and fences thereon which are under his control. The heirs or devisees may themselves, or jointly with the executor or administrator, maintain an action for the possession of the real estate against any one except the executor or administrator.

Personal estate first chargeable with debts. SEC. 117. The personal estate of the deceased which shall come into the hands of the executor or administrator shall be first chargeable with the payment of the debts and expenses; and if the goods, chattels, rights and credits in the hands of the executor or administrator shall not be sufficient to pay the just debts of the deceased and the expenses of administration, and the allowances to the family of the deceased, the whole of the real estate may be sold for that purpose by the executor or administrator; *provided*, that a full and satisfactory showing shall first be made to the court, showing the necessity therefor, duly verified by the executor or administrator, and after due notice to the heirs of the estate, or their representatives.

Real estate may be sold, when.

Proviso.

Embezzlement of estate, penalty for. SEC. 118. If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels or effects of any deceased person, he shall stand chargeable, and be liable to the action of the executor or administrator of the estate for double the value of the property so embezzled or alienated, to be recovered for the benefit of the estate.

Complaint for embezzlement. SEC. 119. If any executor or administrator, heir, legatee, creditor, or other person interested in the estate of any deceased person shall complain to the probate judge, on oath, that any person is suspected to have concealed, embezzled, conveyed away, or disposed of any moneys, goods or chattels of the deceased, or that he has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings which contain evidences of or tend to disclose the right, title, interest or claim of the deceased to any real or personal estate, or any claim or demand, or any last will of the deceased, the said judge may cite such person to appear before the probate court, and may examine him on oath upon the matter of such complaint. If such person be not in the county where letters have been granted, he may be cited and examined either before the probate court of the county where he may be found or before the court issuing the order or citation. But if, in the latter case, he appear and be found innocent, his necessary expenses shall be allowed him out of the estate.

Judge to examine such complaint.

How cited.

Expenses.

Penalty for refusing to appear. SEC. 120. If the person so cited refuse to appear and submit to such examination, or to answer such interrogatories as may be put to him or her touching the matter of such complaint, the court may, by warrant for that purpose, commit him or her to the county jail, there to remain in close custody until he or she shall submit to the order of the court or be discharged according to law; and if, upon such examination, it shall appear that such person has concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods or chattels of the deceased, or that he has in his possession or knowledge any deeds, conveyances, bonds, contracts or other writings which contain evidences of or tend to disclose the right, title, interest or claim of the deceased to any real or personal estate, claim or demand, or any last will of the deceased, the probate court may make an order requiring such person to disclose his knowledge thereof, and may commit such person to the county jail, there to remain until such order be complied with or be discharged according to law; and all such interrogatories or answers shall be in writing, and shall be signed by the party examined and filed in the probate court. The order for such disclosure, made upon such examination, shall be *prima facie* evidence of the right of such administrator to such property in any action that may be brought for the recovery thereof; and any judgment accorded therein shall be for the double value of the property, and damages in addition thereto equal to the value of such property. In addition to the examination of the party, witnesses may be produced and examined on either side.

Such person committed to jail.

Order to be *prima facie* evidence.

Amount of judgment.

Other witnesses.

SEC. 121. The probate judge, upon the complaint on oath of any executor or administrator, may cite any person who shall have been intrusted by such executor or administrator with any part of the estate of the deceased person to appear before such court, and may require such person to render a full account, on oath, of any money, goods, chattels, bonds, accounts or other papers belonging to the estate which shall have come to his possession in trust for the executor or administrator and of his proceedings thereon; and if the person so cited shall refuse to appear and render such account, the court may proceed against him as provided in the preceding section.

Court may cite persons entrusted with portions of an estate, and require full account.

Penalty for refusal.

CHAPTER V.

Provision for the Support of the Family.

SECTION 122. Family may retain homestead.
123. Property may be set apart for family use.
124. Court may make allowance out of estate.

SECTION 125. Allowance to have priority.
126. Family, what property set apart for.
127. Property set apart, how apportioned.
128. When entire estate to be set apart.
129. When to go to children.

Provision of widow and minor children.

SEC. 122. When a person shall die leaving a widow or a minor child or children, the widow, child or children shall, until letters have been granted and the inventory has been returned, be entitled to remain in possession of the homestead and of all the wearing apparel of the family, and of all the household furniture of the deceased, and shall also be entitled to a reasonable provision for their support, to be allowed by the probate judge.

Judge may set apart certain property for use of family.

SEC. 123. Upon the return of the inventory, or at any subsequent time during the administration, the court or probate judge may, of his own motion, or on application, set apart for the use of the family of the deceased all personal property which is by law exempt from execution and the homestead, as designated by the general homestead law, or by section 126 of this act.

Court may make allowance for family in certain cases.

SEC. 124. If the whole property exempt by the law be not included in the inventory, and if the amount set apart be insufficient for the support of the widow and child, or children, the probate court shall make such reasonable allowance out of the estate as shall be necessary for the maintenance of the family, according to their circumstances, during the progress of the settlement of the estate, which, in case of an insolvent estate, shall not be longer than one year after granting letters of administration.

Preference to be given such allowance.

SEC. 125. Any allowance made by the court in accordance with the provisions of this act shall be paid by the administrator in preference to all other charges except funeral charges and expenses of administration.

Property to be set apart for use of widow and minor children.

SEC. 126. If there is no law in force exempting property from execution, the following shall be set apart for the use of the widow or minor child or children, and shall not be subject to administration:

First—All spinning wheels, weaving looms, and stores put up and kept for use.

Second—The family bible, family pictures and school books and library, not exceeding in value two hundred dollars.

Third—All sheep to the number of twenty, with their fleeces, and the yarn or cloth manufactured from the same; two cows, five swine, with the necessary food for them for six months.

Fourth—All wearing apparel of the widow and children and all household goods, furniture and utensils, not exceeding in value seven hundred and fifty dollars.

Fifth—The homestead, consisting of any quantity of land not exceeding twenty acres, and the dwelling house thereon, with its appurtenances, not being included in any incorporated town or city; or, instead thereof, a quantity of land, not exceeding one lot of one hundred feet front, in any incorporated town or city, and the dwelling house or houses, and buildings and improvements to be selected by the widow, or, if there be no widow, to be designated by the probate judge, and not to exceed in any case more than three thousand dollars in value.

Whom such property shall belong to.

SEC. 127. When property shall have been set apart for the use of the family in accordance with the provisions of this act, if the deceased shall have left a widow and no minor child, such property shall be the property of the widow. If he shall have left also a minor child or children, the one-half of such property shall belong to the widow and the remainder to the child, or in equal shares to the children, if there be more than one. If there be no widow the whole shall belong to the minor child or children.

The whole estate to go to widow and minor children without administration in certain cases.

SEC. 128. If on the return of the inventory of any intestate estate it shall appear that the value of the whole estate does not exceed the sum of fifteen hundred dollars, the probate court shall, by a decree for that purpose, assign for the use and support of the widow and minor children of the intestate, or for the support and education of the minor child or children, if there be no widow, the whole of the estate after the payment of the funeral charges and expenses of administration; and there shall be no further proceedings in the administration unless further estate be discovered; and when it shall appear that the value of the whole estate does not exceed the sum of fifteen hundred dollars, it shall be in the discretion of the probate court to dispense with the regular proceedings, or any part thereof, prescribed in this act, for the purpose of a summary administration of the estate and to order distribution of the estate at the end of six months after the issuance of letters; *provided*, that notice to creditors shall have been given to present their claims within four months after the first publication of such notice.

Proviso.

In case widow has other maintenance.

SEC. 129. If the widow has a maintenance derived from her own property equal to the portion set apart to her by the 125th and the 126th sections of this act, the whole property so set apart shall go to the minor children.

CHAPTER VI.

Of Claims Against the Estate.

SECTION 130. Claims to be advertised for; notice to be filed.
131. Claims against estate, when barred; how supported; interest on.
133. Probate judge may present claim.
134. To be endorsed by executor; rejection of claim, what considered.
135. Allowed to be filed; to be sued for.
137. Barred by statute of limitation.
138. To be presented before suit; limitation of.
140. In action pending; allowance in part.
142. Effect of; judgment; reference of.
145. Proceedings when executor or administrator is creditor.
146. Letters may be revoked for any neglect to give notice.
147. Inventory of and sale of property, application for.
150. Sale of perishable property for allowance to family; notice of.
151. Personal property, sale of, how made; notice of.
154. To pay legacies where payment is provided for by will.
155. Inventory appraisement of property.
156. When order of court not required, order to be served.
158. Hearing of application; infant devisees of heirs.
160. Witnesses; order for sale of part of.
162. Order for sale of all; order what to specify; sale at public auction.
164. Who may apply for order to sell.
165. Authority to executor to sell; notice of.
167. Time and place, private sale; when sold on credit.
169. Resale, when may be ordered.
170. Objection to confirmation of.
171. Order confirming conveyances to be recorded.
172. Form and effect of conveyance; notice of sale proved.
174. Postponement of sale; notice of.
176. To pay legacies provided by will.
178. Order of court, when required.
179. When provision by will insufficient.
180. Proportion of estates liable for debts.
181. Contributions among legatees.
182. Of contract for purchase of land.
183. Purchaser to give bond; conditions of.
185. Executor to assign contract; mortgage on land.
187. Expenses of; misconduct in sale.
189. Fraudulent sale; limitation of action.
191. Not to apply in certain cases.
192. Account of; not to purchase.

Executor or administrator to give notice of his appointment.

SEC. 130. Every executor or administrator shall, immediately after his appointment, cause to be published in some newspaper published in the county, if there be one—if not, then in such newspaper as may be designated by the court—a notice to the creditors of the deceased, requiring all persons having claims against the deceased to exhibit them, with the necessary vouchers, within ten months after the first publication of the notice to such executor or administrator, at the place of his residence or transaction of business, to be specified in the notice. Such notice shall be published as often as the judge shall direct, but not less than once a week for four weeks. The court or judge shall also cause personal notice to be served upon the heirs of said estate, if known, or a copy duly mailed to their place of residence, or by publication or posting. In case such executor or administrator resign or be removed before the expiration of ten months after the first publication of such notice, his successor shall give such notice only for the unexpired portion of the ten months. After the notice shall have been given as required by the preceding section, a copy thereof, with the affidavit or affidavits of due application, or of publication or posting, may be filed; and upon such affidavit or affidavits, or upon other testimony, to the satisfaction of the court, a decree shall be made, showing that due and legal notice to the creditors has been given, and directing that such decree be entered in the minutes of the court.

How published.

Notice to heirs.

Decree of notice.

SEC. 131. If a claim be not presented within ten months—unless the value of the estate require a shorter time, as in section 128—after the first publication of the notice, it shall be barred forever; *provided*, if it be not then due, or if it be contingent, it may be presented within ten months after it shall become due or absolute; *and provided further*, that when it shall be made to appear by the affidavit of the claimant to the satisfaction of the executor or administrator and the probate judge that the claimant had no notice, as provided in this act, by reason of absence from this Territory, it may be presented at any time before a decree of distribution is entered.

Barred claims.

Proviso.

SEC. 132. Every claim presented to the administrator shall be supported by the affidavit of the claimant that the amount is justly due, that no payments have been made thereon, and that there are no offsets to the same to the knowledge of the claimant or other affiant; *provided*, that when the affidavit is made by any other person than the claimant, he shall set forth in the affidavit the reason it is not made by the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator shall also require satisfactory vouchers or proofs to be produced in support of the claim. The amount of interest shall be computed and included in the statement of the claim, and the rate of interest determined; *provided*, that no claim which

Claims to be sworn to.

Proviso.

Vouchers to be produced

Interest to be computed.

Proviso.

shall have been due and payable thirty days prior to the death of the deceased shall bear greater interest than ten per cent. per annum from and after the time of issuing letters.

Claims of probate judge how allowed.

SEC. 133. Any probate judge may present a claim against the estate of any deceased person for allowance to the executor or administrator of such estate; and if the executor or administrator allows such claim, he shall, in writing, designate some probate judge of an adjoining county; and the probate judge so designated by the executor or administrator shall, upon the presentation of such claim to him, have the same power to allow or to reject it as he would have if the will had been proved or administration granted in his own county; and the probate judge presenting such claim shall, in case of its rejection by the executor or administrator, or by such probate judge as shall have acted upon it, have the same right to sue in a proper court for its recovery as other persons have when their claims against an estate are rejected.

Executor or administrator to endorse his allowance or rejection on claim.

Probate judge to endorse allowance or rejection.

Refusal for ten days be deemed rejection.

Presentation of claim by notary.

Affidavit of other person.

SEC. 134. When a claim, accompanied by the affidavit required in the preceding section, has been presented to the executor or administrator, he shall endorse thereon his allowance or rejection, with the day and date thereof. If he allow the claim, it shall be presented to the probate judge for his approval, who shall in the same manner endorse upon it his allowance or rejection. If the executor or administrator or the judge refuse or neglect to endorse such allowance or rejection for ten days after the claim shall have been presented to him, such refusal or neglect shall be deemed a rejection; and if a presentation be made by a notary, the certificate of such notary, under seal, shall be *prima facie* evidence of such presentment and rejection; and if made by any person other than the claimant or notary, the affidavit of such person to the fact shall be *prima facie* evidence of such presentment and rejection. If the claim be presented to the executor or administrator before the expiration of the time limited for the presentation of claims, the same may be held valid, though acted upon by the executor or administrator and by the judge after the expiration of such time.

Claims to be filed in probate court, when.

SEC. 135. Every claim which has been allowed by the executor or administrator, and approved by the probate judge, shall, within thirty days thereafter, be filed in the probate court, and be ranked among the acknowledged debts of the estate to be paid in due course of administration. If the claim be founded on a bond, bill, note, or other instrument, the original instrument shall be presented, and the allowance and approval, or rejection, shall be endorsed thereon or attached thereto. If the claim, or any part thereof, be secured by a mortgage or other lien, such mortgage or evidence of lien shall be attached to the claim and filed therewith, unless the same be recorded in the office of the recorder of the county in which the land lies, in which case it shall be sufficient to describe the mortgage or lien, and refer to the date, volume and page of its record; and in all cases it shall be permitted to the claimant to withdraw his claim from file on leaving a certified copy with a receipt endorsed thereon by himself or his agent. A brief description of every claim filed shall be entered by the clerk in the register, showing the name of the claimant, the amount and character of the claim, rate of interest and date of approval; *provided*, if such original instrument be lost or destroyed, then in lieu thereof the claimant shall be required to file his affidavit, particularly describing such instrument, and stating the loss or destruction thereof, upon which affidavit the endorsement hereinafter mentioned shall be made.

Mortgage claims how filed.

Clerk to register claims.

Proviso.

SEC. 136. When a claim is rejected either by the executor or administrator or probate judge, the holder shall bring suit in the proper court against the executor or administrator within three months after the date of its rejection, if it be then due, or within three months after it becomes due; otherwise the claim shall be forever barred.

Rejected claims.

SEC. 137. No claim shall be allowed by the executor or administrator or by the probate judge which is barred by the statute of limitations.

Claims barred by statute.

SEC. 138. No holder of any claim against an estate shall maintain any action thereon, unless the claim shall have been first presented to the executor or administrator.

Claims to be first presented.

SEC. 139. The time during which there shall be a vacancy in the administration shall not be included in any limitations herein prescribed.

Limitations of time.

SEC. 140. If any action be pending against the testator or intestate at the time of his death, the plaintiff shall in like manner present his claim to the executor or administrator for allowance or rejection, authenticated as required in other cases; and no recovery shall be had in the action unless proof be made of the presentations required by law.

Claims pending in suit to be presented.

SEC. 141. Whenever any claim shall be presented to any executor or administrator or to the probate judge, and he shall be willing to allow the same in part, he

Claims accepted in part only.

Costs how awarded.

shall state in his endorsement the amount he is willing to allow. If the creditor refuse to accept the amount allowed in satisfaction of his claim, he shall recover no costs in any action which he may bring against the executor or administrator unless he shall recover a greater amount than that offered to be allowed.

Effect of judgment against estate.

Effect of execution.

SEC. 142. The effect of any judgment rendered against any executor or administrator upon any claim for money against the estate of his testator or intestate shall be only to establish the claim in the same manner as if it had been allowed by the executor or administrator and the probate judge; and the judgment shall be that the executor or administrator pay in due course of administration the amount ascertained to be due. A certified transcript of the judgment shall be filed in the probate court. No execution shall issue upon such judgment, nor shall it create any lien upon the property of the estate, or give to the judgment creditor any priority of payment.

Execution not to issue in certain cases.

Effect of levy on property of decedent.

Affidavit may be required.

SEC. 143. When any judgment has been rendered against the testator or intestate in his life, no execution shall issue thereon after his death; but a certified copy of such judgment shall be presented to the executor or administrator, and be allowed and filed, or rejected, as any other claim, but need not be supported by the affidavit of the claimant; and if justly due and unsatisfied, shall be paid in due course of administration; *provided, however*, that if the execution shall have been actually levied upon any property of the deceased, the same may be sold for the satisfaction thereof, and the officer making the sale shall account to the executor or administrator for any surplus in his hands. The executor or administrator may, however, require the affidavit of the claimant or other satisfactory proof that the judgment, or any portion thereof, is justly due and unsatisfied.

Costs against executor or administrator; individual liability.

Costs to be allowed him in his account, when

SEC. 144. When a judgment has been recovered, with costs, against any executor or administrator, the executor or administrator shall be individually liable for the costs; but they shall be allowed him in his administration accounts, unless it shall appear that the suit or proceedings in which the costs were taxed shall have been prosecuted or resisted without just cause.

Individual claims of executor or administrator.

SEC. 145. If the executor or administrator is himself a creditor of the testator or intestate, his claim, duly authenticated by affidavits, shall be presented for allowance or rejection to the probate judge, and its allowance by the judge shall be sufficient evidence of its correctness, and not otherwise.

SEC. 146. If any executor or administrator shall neglect, for two months after his appointment, to give notice to creditors as prescribed by this chapter, it shall be the duty of the court to revoke his letters.

Penalty for failing to notify creditors.

SEC. 147. At the same term at which he is required to return his inventory, the executor or administrator shall also return a statement of all claims against the estate which shall have been presented to him when required by the court, and from term to term thereafter shall present a statement of claims subsequently presented to him. In all such statements he shall designate the names of the creditors, the nature of each claim, when it became due or will become due, and whether it was allowed or rejected by him.

Statement of all claims to be filed.

How made.

SEC. 148. No sale of any property of an estate of a deceased person shall be valid unless made under an order of the probate court, except as otherwise provided in this act.

No sale to be made without order of court.

SEC. 149. All applications for orders of sale shall be by petition in writing, in which shall be set forth the facts showing the sale to be necessary; and upon the hearing, any person interested in the estate may file his written objections, which shall be heard and determined.

Application for order of sale.

SEC. 150. At any time after receiving letters the executor or administrator or special administrator may apply to the court or judge for an order to sell the perishable property of the estate and so much other property as may be necessary to be sold to pay the allowance made to the family of the deceased. If there be a delay in obtaining such order, such property may be sold without an order of sale; *provided*, that the executor or administrator or special administrator shall be held responsible for such property, unless, after making a sworn return, and on a proper showing, the court shall approve such sale. If claims against the estate have been allowed, and a sale of property shall be necessary for their payment, or of the expenses of the administration, the executor or administrator may also apply for an order to sell so much of the personal property as shall be necessary. Upon filing his petition, notice of at least five days shall be given of the hearing of the application either by posting notices or by advertising. He may make a similar application either in vacation or during term, from time to time, so long as any personal property remains in his hands, and a sale thereof is necessary; and if he deem it for the best interest of the estate, he may, at any time after the filing of the inventory, make an application in like manner, and after giving like notice, for an

Application for order of sale of perishable property and to pay widow's allowance.

Sold without order in certain cases.

Proviso.

Order of sale to pay allowances.

Petition and notice.

Application may be made in vacation.

Application for order to sell whole estate.

order to sell the whole of the personal property belonging to the estate.

Court may order sale if necessary.

SEC. 151. If it appear that a sale is necessary, or for the best interest of the estate, the court or judge shall order it to be made. In making such sales, the court or judge shall order such articles as are not necessary for the support and subsistence of the family of the deceased, or are not specially bequeathed, to be first sold. Articles so bequeathed shall not be sold until the residue of the personal estate has been applied to the payment of the debts.

Bequeathed articles not to be sold until necessary.

Sale how made.

SEC. 152. The sale of personal property shall be made at public auction, and after public notice given for at least ten days, unless, for good reason shown, the court or probate judge shall order a private sale, or a shorter notice. Public sales of such property shall be made at the court house door, at the residence of the deceased, or at some other public place to be mentioned in the notice; and no sale shall be made of any property which is not present at the time of selling.

Sale where made.

Property to be present.

Notice of sale how made.

SEC. 153. The notice shall be given by notices posted in three public places in the county, or by publication in a newspaper, if the judge shall so order, in which shall be specified the time and place of the sale.

Sale of real estate to pay allowances and debts when personal is insufficient.

SEC. 154. When the personal estate in the hands of the executor or administrator shall be insufficient to pay the allowance to the family, the debts that may be outstanding against the deceased, and the debts, expenses and charges of the administration, the executor or administrator may sell the real estate for that purpose, upon order of the probate court.

How order to sell real estate obtained.

Petition what to contain.

SEC. 155. To obtain such order he shall present a petition to the probate court, or to the judge at chambers, setting forth the amount of personal estate that has come to his hands, and how much thereof, if any, remains undisposed of; the debts outstanding against the deceased, as far as the same can be ascertained or estimated; the amount due upon the family allowance, or that will be due after the same shall have been in force for one year; the debts, expenses and charges of the administration already accrued, and an estimate of what will or may accrue during the administration; a description of all the real estate of which the testator or intestate died seized, or in which he had any interest, or in which the intestate estate has acquired any interest, and the condition and value of the respective portions and lots, and whether the same be community or separate property; the names and ages of the devisees, if any, and of the heirs of the deceased; which petition shall be verified by the oath of the party presenting the same. If the inventory and appraisement on file contain a full description of the personal estate of the deceased, and of all the real estate of which the testator or intestate died seized, or in which he had any interest, or in which the estate had acquired any interest, such inventory, by a proper reference, may be made a part of the petition for a description of the personal estate or real estate, or both; and if the same be full as to all property, except property subsequently discovered or profits subsequently received, such reference may be had to the inventory, and the additional property may be set forth in the petition. If all the matters above enumerated cannot be ascertained, the same shall be so stated in the petition.

Petition to be verified.

Sec. 156. If it shall appear to the court or judge by such petition that it is necessary to sell the whole or some portion of the real estate for the purpose mentioned in section 154 of this act, or any or either of them, such petition shall be filed, and an order shall thereupon be made directing all persons interested in the estate to appear before the court at a time and place specified, not less than four nor more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell so much of the real estate of the deceased as shall be necessary.

Court to cause all persons interested to be notified.

Sec. 157. A copy of such order to show cause shall be personally served on all persons interested in the estate at least five days before the time appointed for hearing the petition, or shall be published at least four successive weeks in such newspaper as the court or judge shall order; *provided, however*, if all persons interested in the estate shall signify in writing their assent to such sale, the notice may be dispensed with.

Court to order copy of his order to be personally served on interested persons. May be by publication. Notice may be waived by consent.

Sec. 158. The probate court, at the time and place appointed in such order, or at such other time as the hearing may be adjourned to, upon satisfactory proof of due service or publication of a copy of the order, by affidavit or otherwise, or upon filing the consent in writing to such sale of all parties interested, shall proceed to the hearing of such petition; and, if such consent be not filed, shall hear and examine the allegations and proofs of the petitioners and of all persons interested in the estate who may oppose the application.

Court to hear the cause.

Sec. 159. If any of the devisees or heirs of the deceased are minors, and have a general guardian in the county, a copy of the order shall be served upon the guardian at least ten days before the actual hearing. If

Guardian, how notified.

Appointment of guardians *ad litem.*

Attorneys for unrepresented heirs and devisees and for creditors may be appointed

Effect of appearance of such guardian or attorney.

they have no guardian, the court or judge shall, at the time of filing the petition, or before proceeding to act upon the petition, appoint some disinterested person their attorney for the sole purpose of appearing for them and taking care of their interest in the proceedings. The court may also, upon the hearing, if it be deemed necessary, appoint such attorney for the heirs or devisees, if they are unrepresented, whether minors or otherwise; and may likewise appoint an attorney for the creditors, if they are unrepresented. If such guardian of the minors, or such attorney for minors, or others, appear on the hearing, such appearance shall be evidence of service of notice upon such guardian or attorney.

Examination of witnesses.

Process to compel attendance.

SEC. 160. The executor or administrator may be examined on oath, and witnesses may be examined by either party, and process to compel their attendance and testimony may be issued by the probate judge, in the same manner and with like effect as in other cases.

Determination of court

SEC. 161. If it shall appear to the court that it is necessary to sell a part of the estate, real or personal, and that by a sale of such part the residue of the estate, or some specific part or piece thereof, would be greatly injured or diminished, or subject to expenses, or rendered unprofitable, the court may authorize the sale of the whole estate, or of such part thereof as may be judged necessary and best for the interest of all concered.

Court may order the whole or a part sold.

SEC. 162. If the court shall be satisfied, after a full hearing upon the petition and an examination of the proofs and allegations of the parties interested, that a sale of the whole, or some portion of the real estate is necessary for any of the causes mentioned in sections 150 and 154 of this act, or if such sale be assented to by all the persons interested, an order of sale shall be made authorizing the executor or administrator to sell the whole, or so much, and such parts of the real estate described in the petition as the court shall judge necessary or beneficial.

Order to prescribe the terms of sale.

How lands to be sold.

SEC. 163. The order shall specify the lands to be sold and the terms of sale, which may be either for cash or on a credit, not exceeding one year, payable in gross or installments, with interest, as the court may direct. The tract or tracts of land may be sold in one parcel or in subdivisions, as the executor or administrator shall judge most beneficial to said estate, unless the court shall otherwise direct. If it appears that any part of such real estate has been devised and not charged in such devise with the payment of debts or legacies, the court shall

Sale may be public or private.

Executor or administrator may be compelled to sell.

order that part descended to heirs to be sold before that so devised. Every such sale shall be ordered to be made at public auction, unless, in the opinion of the court, it would benefit the said estate to sell the whole or some part of such real estate at private sale, in which case the court, if the same is asked for in the petition, may order or direct such real estate, or any part thereof, to be sold at either private or public sale, as the executor or administrator shall judge to be the most beneficial for said estate. If the executor or administrator shall neglect or refuse to make a sale under the order of sale, he may be compelled to proceed to sell by order of the court, made on motion, after due notice by any party interested.

Persons interested may apply for order of sale in certain cases.

Petition shall contain, what.

Decree how made.

SEC. 164. If the executor or administrator shall neglect to apply for an order of sale, whenever it may be necessary, any person interested in the estate may make application therefor, in the same manner as the executor or administrator, and notice thereof shall be given to the executor or administrator before the hearing. The petition of such applicant shall contain as many of the matters set forth in section 155 of this act as he can ascertain, and the decree of sale shall fix the period of time within which the executor or administrator shall make the sale.

Copy of order to be delivered to executor or administrator.

SEC. 165. Upon making such order mentioned in the last section, a certified copy of the order shall be delivered by the court or the clerk to the executor or administrator, who shall be thereupon authorized and required to sell the real estate as directed.

Notice of sale of real estate how made.

SEC. 166. When a sale is ordered, notice of the time and place of holding the same shall be posted up in three of the most public places in the county in which the land is situated, and shall be published in a newspaper, if there be one printed in the same county, and if there be none, then in such paper as the court may direct, for three weeks successively next before such sale, in which notice the land and tenements to be sold shall be described with common certainty.

Time and place, private sale.

SEC. 167. Such sale shall be made in the county where the land is situated; but where the tract of land is situated in two or more counties, it may be sold in either of said counties. The sale shall be made between the hours of nine o'clock in the morning and the setting of the sun on the same day, and shall be made at public auction, unless the court shall have ordered the real estate, or some part thereof, to be sold either at public or private sale; but the same shall not be sold at private sale until after notice of the time and place and terms of such sale shall have been given according to law, as in cases of sales at public auction; nor shall such sale at private sale be made unless the real estate to be sold shall have been appraised within a year previous to the time of such sale; nor shall the same be sold at private sale for more than ten per cent. less than the appraised value thereof. If said real estate has not been so appraised, or if the court shall be satisfied that the appraisement is too high or too low, appraisers shall be appointed, and they shall make an appraisement thereof in the same manner as in the case of the appraisement of the inventory.

Notes for purchase-money.

SEC. 168. The executor or administrator shall, when the sale is made upon a credit, take the note or notes of the purchaser for the purchase-money, with a mortgage on the property to secure their payments.

Resale, when may be ordered.

SEC. 169. The executor or administrator making any sale of any real estate shall, at the next term of the court thereafter, after making any such sale, upon notice of at least ten days, to be given in such manner as the court or judge may direct, make a return of his proceedings to the probate judge, who shall examine the same, and if he shall be of opinion that the proceedings were unfair, or that the sum bid is disproportionate to the value, and that a sum exceeding such bid at least ten per cent., exclusive of the expenses of a new sale, may be obtained, he shall vacate such sale, and direct another to be had, of which notice shall be given, and the sale shall be in all respects conducted as if no previous sale had taken place; *provided*, that if an offer of ten per cent. or more, exclusive of the expenses of a new sale, be made to the court in writing by a responsible person, it shall be in the discretion of the court to accept and confirm the sale to such person or to order a new sale.

Objections to confirmation of sale.

SEC. 170. When the return of the sale is made and filed, any person interested in the estate may file written objections to the confirmation of the sale, and they may be heard on said first day of the term subsequent to the sale, or any subsequent day to which the matter may be continued, or upon any day that may be fixed by the order of the court or judge, and may produce witnesses in support of his objections.

Order confirming conveyances to be recorded

SEC. 171. If it appear to the court that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, or, if disproportionate, that a greater sum, as above specified, cannot be obtained; or, if the advance bid, mentioned in section 169 of this act be made and accepted by the court, the court shall make an order confirming the sale and directing the conveyances to be executed; and such sale from that time shall be confirmed and valid, and a certified copy of the order authorizing the sale and of the order confirming the same and directing conveyances to be executed shall be recorded in the office of the recorder of the county within which the land sold is situated; *provided*, that if, after such confirmation, the purchaser shall neglect or refuse to comply with the terms of sale, the court may, on motion of the executor or administrator, and after notice to the purchaser, order a new sale of the property sold to such purchaser. If the amount realized on such resale do not cover the bid and expenses of the previous sale, such purchaser shall be liable for the deficiency.

Form and effect of conveyance

SEC. 172. Such conveyances shall thereupon be executed to the purchaser by the executor or administrator. They shall refer to the order of the probate court authorizing and confirming the sale of the property of the testator or intestate, and directing conveyances thereof to be executed, and to the record of such orders in the office of the county recorder, either by the date of such recording or by the date and volume and page of such record; and such reference shall have the same effect as if the said orders were at large inserted in the conveyance. The conveyance so made shall be deemed to convey all right, title and interest and estate of the testator or intestate in the premises at the time of his death. When, however, by operation of law or otherwise, the estate shall have acquired any right, title or interest in the premises other than or in addition to that of the testator or intestate at the time of his death, such right, title or interest shall also be passed by such conveyances.

Proof of notice.

SEC. 173. Before any order is entered concerning the sale it shall be proved to the satisfaction of the court that notice was given of the sale as herein prescribed, and the order of confirmation shall state that such proof was made.

Postponement of sale, notice of.

SEC. 174. If at the time appointed for the same the executor or administrator shall deem it for the interest of all persons concerned therein that the sale shall be postponed, he may adjourn the same from time to time, not exceeding in all three months.

Notice of adjournment.

SEC. 175. In case of the adjournments, notice therefor shall be given by a public declaration at the time and place first appointed for the sale; and if the adjournment be for more than one day, further notice shall be given by posting notices in three or more public places in the county where the land is situated or publishing the same, or both, as the time and circumstances will admit.

To pay legacies.

SEC. 176. When a testator shall have given any legacy by will that is effectual to pass or charge real estate, and his goods, chattels, rights and credits shall be insufficient to pay a legacy, together with his debts and charges of administration, the executor or administrator with the will annexed may obtain an order to sell his real estate for that purpose, in the same manner prescribed in this act in case of a sale for the payment of his debts.

Expenses how paid.

SEC. 177. If the testator shall make provision by his will or designate the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they shall be paid according to the provisions of the will, and out of the estate thus appropriated, so far as the same may be sufficient.

Order of court, when required.

SEC. 178. When such provision has been made, or any property directed by the will to be sold, whether for the payment of debts or expenses or for any other purpose, the executor or administrator with the will annexed may proceed to sell without the order of the probate court, but he shall be bound, as an administrator, to give notice of the sale and to return accounts thereof to the court, and to proceed in making the sale in all respects as if it were made under the order of the court, unless there are special directions given in the will, in which case he shall be governed by such directions. But in all cases no sale shall be valid unless confirmed by the court under the rules prescribed in cases of sales of real estate by an administrator, and before granting such confirmation the court may require security, as in cases of sales of land by an administrator.

When provision of will insufficient for.

SEC. 179. If the provision made by the will or the estate appropriated be not sufficient to pay the debts and expenses of the administration and family expenses, such part of the estate as shall not have been disposed of by the will, if any, shall be appropriated for that purpose, according to the provisions of this act.

Proportion of estate liable for debts

SEC. 180. The estate, real and personal, given by the will to any legatees or devisees shall be held liable to the payment of debts, expenses of administration and family expenses, in proportion to the value or amount of the several devises or legacies, except that specified devises or legacies may be exempted, if it shall appear to the court necessary to carry into effect the intention of the testator, if there shall be other sufficient estate.

Contributions among legatees.

SEC. 181. When the estate given by any will has been sold for the payment of any debts and expenses, all the devisees and legatees shall be liable to contribute, according to their respective interests, to any devisee or legatee from whom the estate devised to him may have been taken for the payment of debts or expenses; and the probate court, when distribution is made, shall, by decree for that purpose, settle the amount for the several liabilities and decree how much each person shall contribute.

Of contract for purchase of land.

SEC. 182. If a deceased person at the time of his death was possessed of a contract for the purchase of lands, his interest in such lands, and under such contracts, may be sold, on the application of his executor or administrator, in the same manner as if he had died seized of such lands, and the same proceedings may be had for that purpose as are prescribed in this act in respect to lands of which he died seized, except as hereinafter provided.

Purchaser to give bond, condition of.

SEC. 183. Such sale shall be made subject to all payments that may hereafter become due on such contracts; and if there be any such payments thereafter to become due, such sale shall not be confirmed by the probate judge until the purchasers shall execute a bond to the executor or administrator for his benefit and indemnity and for the benefit and indemnity of the persons entitled to the interest of the deceased in the lands so contracted for in double the whole amount of payments thereafter to become due on such contract, with such sureties as the probate judge shall approve.

Bond, how conditioned.

SEC. 184. Such bond shall be conditioned that the purchaser will make all payments for such land that shall become due after the date of such sale, and will indemnify the executor or administrator and the person so entitled against all demands, costs, charges and expenses by reason of any covenant or agreement contained in such contract; but if there be no payments thereafter to become due on such contract, no bond shall be required of the purchaser.

Executor to assign contract.

SEC. 185. Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment of the contract, which assignment shall vest in the purchaser, his heirs and assigns all the right, title and interest of the persons entitled to the interest of the deceased in the lands sold at the time of the sale, and such purchaser shall have the same rights and remedies against the vendor of such land as the deceased would have had if he were living.

Purchase-money how applied.

SEC. 186. When any sale is made by an executor or administrator, pursuant to the provisions of this act, of land subject to any mortgage or lien which is a valid claim against the estate of the deceased, the purchase-money shall be applied, after paying the necessary expenses of the sale, first to the payment and ratification of the mortgage or lien, and the residue in due course of administration. Such application of the purchase-money to the satisfaction of the mortgage or lien shall be made without delay, and the land shall remain subject to such mortgage or lien until the purchase-money shall have been actually so applied; *provided, however*, that when it shall be shown to be necessary, the court may direct that sufficient of the purchase-money be retained to meet such portions of the family allowance and charges and expenses of administration as may properly be required from the holder of such claims. Such reservation of a portion of the purchase-money shall not prevent the discharge of the mortgage or lien, and no lien against any estate shall be effected by the statute of limitations pending the proceedings for the settlement of such estate.

Expenses of sale.

SEC. 187. In all cases in which land is sold by an executor or administrator the necessary expenses of the sale shall first be paid out of the proceeds.

Suit for neglect.

SEC. 188. If there be any neglect or misconduct in the proceedings of an executor in relation to any sale by which any person interested in the estate shall suffer damages, the party aggrieved may recover the same in a suit upon the bond of the executor or administrator, or otherwise, as the case may require.

Liability of executor or administrator.

SEC. 189. An executor or administrator who shall fraudulently sell any real estate of his testator or intestate, contrary to the provisions of this act, shall be liable in double the value of the land sold as damages, to be recovered in an action by the person having an estate of inheritance therein.

Time of commencing action.

SEC. 190. No action for the recovery of any estate sold by an executor or administrator under the provisions of this act shall be maintained by any heir, or other person claiming under the deceased testator or intestate, unless it be commenced within three years next after the sale.

Time in which minors may commence actions.

SEC. 191. The preceding section shall not apply to minors or others under any legal disability to sue at the time when the right of action shall first accrue, but all such persons may commence such action at any time within three years after the removal of the disability.

Account of sale to be made.

SEC. 192. Whenever a sale has been made by an executor or administrator of any property of the estate, real or personal, it shall be his duty to return to the probate court, at its next term thereafter, an account of sales, verified by his affidavit. If he neglects to make such return, he may be punished by attachment, or his letters may be revoked, one day's notice having been first given him to appear and show cause why such attachment should not issue or such revocation should not be made.

Executor and administrator not to purchase estate property.

SEC. 193. No executor or administrator shall, directly or indirectly, purchase any property of the estate he represents.

CHAPTER VII.

Of the Powers and Duties of the Executor and Administrator, and of the Management of the Estate.

SECTION 194. To take possession of; may sue and be sued for recovery of.
196. May sue for trespass.
198. Partnership interest to be appraised.
199. Action on bond of; who to join in action.
201. Debts compounded.
202. Recovery of property fraudulently disposed of by the testator.
204. Disposition of; so recovered.

To take possession of, may sue and be sued.

SEC. 194. The executor or administrator shall take into his possession all the estate of the deceased, real and personal, and shall collect all debts due to the deceased.

Actions against executors and administrators for recovery of property.

SEC. 195. Actions for the recovery of any property, real or personal, or for the possession thereof, and all actions founded upon contracts, may be maintained by and against executors and administrators in all cases in which the same might have been maintained by or against their respective testators or intestates.

May sue for trespass.

SEC. 196. Executors and administrators may maintain actions against any person who shall have wasted, destroyed, taken or carried away, or converted to his own use, the goods of their testator or intestate in his lifetime. They may also maintain actions for trespass committed on the real estate of the deceased in his lifetime.

Action against administrator or executor for trespass of testator or intestate.

SEC. 197. Any person, or his personal representatives, shall have action against the executor or administrator of any testator or intestate who in his lifetime shall have wasted, destroyed, taken or carried away, or converted to his own use, the goods or chattels of any such person, or committed any trespass on the real estate of such person.

Partnership interest to be appraised.

SEC. 198. When there was any partnership existing between the testator or intestate at the time of his death and any other person, the surviving partner shall have the right to continue in possession of the effects of the partnership and to settle its business, but the interest of the deceased shall be included in the inventory and appraised as other property. The surviving partner shall proceed to settle the affairs of the partnership without delay, and shall account with the executor or administrator, and pay over such balance as may from time to time be payable to him in right of his testator or intestate. Upon the application of the executor or administrator, the probate judge may, whenever it may appear necessary, order the surviving partner to render an account, and in case of neglect or refusal, may, after notice, compel it by attachment. And the executors or administrators may maintain against him any action which his testator or intestate could have maintained.

Action on bond of; who to join in action.

SEC. 199. Any administrator may, in his own name, for the use and benefit of all parties interested in the estate, maintain actions on the bond of the executor, or of any former administrator of the same estate.

Who joined in action as executors.

SEC. 200. In actions brought by or against executors, it shall be necessary to join those as parties to whom letters shall have been issued and who have not qualified.

Debts compounded.

SEC. 201. Whenever a debtor of a deceased person shall be unable to pay all his debts, the executor or administrator, with the approbation of the probate court or judge, may compound with him and give him a discharge upon receiving a fair and just dividend of his effects. A compromise may also be authorized when it shall appear to be just and for the best interest of the estate.

Recovery of property fraudulently disposed of by testator.

SEC. 202. When there shall be a deficiency of assets in the hands of an executor or administrator, and when the deceased shall in his lifetime have conveyed any real estate, or any rights or interest therein, with intent to defraud his creditors, or to avoid any right, debt or duty of any person, or shall have so conveyed such estate that by law the deeds or conveyances are void as against creditors, the executor or administrator may, and it shall be his duty to commence and prosecute to final judgment any proper action for the recovery of the same; and may recover for the benefit of the creditors all such real estate so fraudulently conveyed; and may also, for the benefit of the creditors, sue and recover all goods, chattels, rights or credits which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

Such action when to be brought.

SEC. 203. No executor or administrator shall be bound to sue for such estate, as mentioned in the preceding section, for the benefit of the creditors unless on application of creditors of the deceased, nor unless the creditors making the application shall pay such part of the costs and expenses, or give such security to the executor or administrator thereof as the probate judge shall direct.

Disposition of when so recovered.

SEC. 204. All real estate so recovered shall be sold for the payment of debts, in the same manner as if the deceased had died seized thereof, upon obtaining an order therefor from the probate court; and the proceeds of all goods, chattels, rights and credits so recovered shall be appropriated in payment of the debts of the deceased, in the same manner as other property in the hands of the executor or administrator.

CHAPTER VIII.

Conveyance of Real Estate by Executors and Administrators in Certain Cases.

SECTION 205. Contracts for sale to be completed; petition for; hearing of.
208. Order to execute conveyance.
209. Appeal from order.
210. Petition dismissed.
211. Effect of conveyance.
212. Effect of recording decree; enforcing the same.
214. Death of party to whom conveyance is made.

Contracts for sale to be completed.

SEC. 205. When any person who is bound by contract, in writing, to convey any real estate shall die before making the conveyance, the probate court may make a decree authorizing and directing the executor or administrator to convey such real estate to the person entitled thereto in all cases where such deceased person, if living, might be compelled to make such conveyance.

Petition for how heard.

SEC. 206. On the presentation of a petition by any person claiming to be entitled to such conveyance from any executor or administrator setting forth the facts upon which such claim is predicated, the probate judge shall appoint a time and place for hearing such petition, which shall be at a regular term of the court, and shall order notice of the pendency thereof and of the time and place of hearing to be published at least four successive weeks before such hearing in such newspaper in this Territory as he may designate.

Proceedings on hearing of.

SEC. 207. At the time and place appointed for such hearing, or at such other time as the same may be adjourned to, upon proof, by affidavit or otherwise, of the due publication of the notice, the court shall proceed to a hearing; and all persons interested in the estate may appear and contest such petition by filing their objections in writing; and the court may examine, on oath, the petitioner and all who may be produced before him for that purpose.

Order to execute conveyance.

SEC. 208. After a full hearing of such petition and objections and examination of the facts and circumstances of the claim, if the court be satisfied that the petitioner is entitled to a conveyance of the real estate described in the petition, the court shall make a decree authorizing and directing the executor or administrator to execute a conveyance thereof to the petitioner.

Appealfrom order.

SEC. 209. Any person interested may appeal from such decree to the district court for the same county, as in other cases; but if no appeal be taken from such decree within the time limited therefor by law, or if such decree be affirmed on appeal, it shall be the duty of the executor or administrator to execute the conveyance according to the directions contained in the decree, and a certified copy thereof shall be recorded in the county where the lands lie and shall be evidence of the correctness of the proceedings and of the authority of the executor or administrator to make the conveyance.

Petition dismissed.

SEC. 210. If upon a hearing in the probate court, as hereinbefore provided, the court shall doubt the right of the petitioner to have a specific performance of the contract, the court shall dismiss the petition, without prejudice to the rights of the petitioner, who may, at any time within six months thereafter, proceed in the district court to enforce a specific performance.

Effect of conveyance

SEC. 211. Every conveyance made in pursuance of a decree of the probate court, as provided in this chapter, shall be effectual to pass the estate contracted for as fully as if the contracting party himself was still living and then executed the conveyance.

Recording decree, effect of.

SEC. 212. A copy of the decree for a conveyance made by the probate court, and duly certified and recorded in the office of the recorder of the county where the lands lie, shall give the person entitled to the conveyance a right to the possession of the lands contracted for, and to hold the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

Record not to effect other process.

SEC. 213. The recording of any decree, as provided above, shall not prevent the court making such decree from enforcing the same by other process.

Death of party to whom conveyance is made.

SEC. 214. If the person to whom the conveyance was to be made shall die before the commencement of the proceedings, according to the provisions of this chapter, or before the completion of the conveyance, any person who would have been entitled to the estate under him as heir, devisee, or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person, for the benefit of the person so entitled, may commence such proceedings, or may prosecute the same if already commenced, and the conveyance shall be so made as to vest the estate in the same person who would have been entitled to it, or in the executor or administrator for their benefit.

CHAPTER IX.

Accounts to be Rendered by Executors and Administrators, and Payment of Debts.

SECTION 215. Executor when personally liable for.
216. Executor with what chargeable.
217. Executor, no profit or loss to.
218. Uncollected debts.
219. Executor, compensation of.
220. Not to purchase claims against estate.
221. Commission in lieu of compensation.
222. Accounts, citation for.
224. Exhibit for receipts; citation for objection.
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228. Account, when to be rendered; what to prohibit.
229. Account after authority is revoked.
230. Revocation for failure to account.
231. Vouchers for all payments.
232. Items less than twenty dollars excepted.
233. Notice of settlement; exceptions to account.
235. Minor to have guardian.
236. Referees to be appointed; settlement to be conclusive.
238. Proof of notice of settlement.
239. Debs, order in which paid; preference to mortgage.
241. Dividend, insufficient estate.
242. Funeral expenses.
243. Order for payment of creditors; disputed claims.
245. Executor liable after decree for payment.
246. Claims not included in order for payment.
247. Payment of legacies and distribution; final account.
249. Proceedings on neglect to render.

Executor or administrator personally liable, when.

SEC. 215. No executor or administrator shall be chargeable upon any special promise to answer damages or to pay the debts of the testator or intestate out of his own estate unless the agreement for that purpose, or some memorandum or note thereof, is in writing, and signed by such executor or administrator, or by some other person by him thereunto specially authorized.

Executor or administrator with what chargeable.

SEC. 216. Every executor or administrator shall be chargeable in his account with the whole of the estate of the deceased which may have come into his possession at the value of the appraisement contained in the inventory, except as provided in the following sections, and with all the interest, profit and income of the estate.

Executor or administrator not to share profit or loss, when.

SEC. 217. He shall not make profit by the increase, nor suffer loss by the decrease or destruction, without his fault, of any part of the estate. He shall account for the excess when he shall sell any part of the estate for more than the appraisement; and if any shall be sold for less than the appraisement, he shall not be responsible for the loss, if the sale has been justly made.

Uncollected debts, no liability for, when.

SEC. 218. No executor or administrator shall be accountable for any debts due to the deceased, if it shall appear that they remain uncollected without his fault.

Compensation of executor or administrator.

SEC. 219. He shall be allowed all necessary expenses in the care, management and settlement of the estate, and for his services such fees as the law provides; but when the deceased shall by his will make some other provision for the compensation of the executor, that shall be deemed a full compensation for his services, unless he shall, by a written instrument, filed in the probate court, renounce all claim for compensation provided by the will.

Not to purchase claims against estate.

SEC. 220. No administrator or executor shall purchase any claim against the estate he represents; and if he shall have paid any claim for less than its nominal value, he shall only be entitled to charge in his account so much as he shall have actually paid.

Commission in lieu of compensation.

SEC. 221. When no compensation shall have been provided by the will, or the executor shall renounce all claim thereto, he shall be allowed compensation upon the amount of the whole estate accounted for by him as follows: For the first thousand dollars, at the rate of seven per cent.; for all above that sum, and not exceeding ten thousand dollars, at the rate of five per cent.; for all above that sum, at the rate of four per cent.; and the same commission shall be allowed to administrators. In all cases such further allowance may be made as the probate judge may deem just and reasonable for any extraordinary service not required by an executor or administrator in the common course of his duty; *provided*, the total amount of such allowance shall not exceed the amount of commission allowed by this section.

Accounts, citation for.

Sec. 222. At the third term of the court after his appointment, and thereafter at any time when required by the court, either upon his own motion or upon the application of any person interested in the estate, the executor or administrator shall render, for the information of the court, an exhibit, under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate, and the names of the claimants, and all other matters necessary to show the condition of its affairs.

Failure to render account, to be cited.

Sec. 223. If the executor or administrator fail to render an exhibit at the third term of the court, it shall be the duty of the judge to cause a citation to be issued requiring him to appear and render it.

Receipts, exhibit of.

Sec. 224. Any person interested in the estate may, at any time before the final settlement of accounts, present his petition to the probate judge, praying that the executor or administrator be required to appear and render such exhibit, setting forth the facts, showing that it is necessary and proper that such an exhibit should be made.

Citation to be issued, when.

Sec. 225. If the judge be satisfied, either from the oath of the applicant or from any other testimony that may be offered, that the facts alleged are true, and shall consider the showing of the applicant sufficient, he shall direct a citation to be issued to the executor or administrator, requiring him to appear at some day to be named in the citation, which shall be during a term of the court, and render an exhibit as prayed for.

Account may be contested.

Sec. 226. When an exhibit is rendered by an executor or administrator, any person interested may appear, and by objection, in writing, contest any account or statement therein contained. The court may examine the executor or administrator, and if he has been guilty of negligence, or has wasted, or embezzled, or mismanaged the estate, his letters shall be revoked.

Attachment for disobeying citation.

Sec. 227. If any executor or administrator neglect or refuse to appear and render an exhibit after being duly cited, an attachment may be duly issued against him, or his letters may be revoked, in the discretion of the court.

Account when to be rendered.

Sec. 228. Every executor or administrator shall render a full account and report of his administration upon the expiration of one year from the time of his appointment. If he fail to present his account, it shall be the duty of the court or judge to compel the rendering of such account by attachment, and any person interested in the estate may apply for and obtain an attachment; but no attachment shall issue unless a citation has been first issued and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue. Every account rendered shall exhibit, not only the debts which may have been paid, but also a statement of all debts which have been duly presented and allowed during the period embraced in the account.

Account after revocation of authority.

SEC. 229. Whenever the authority of an executor or administrator shall cease or be revoked for any reason, he may be cited to account before the probate court, at the instance of the person succeeding to the administration of the same estate, in like manner as he might have been cited by any person interested in the estate during the time he was executor or administrator.

Revocation for failure to account.

SEC. 230. If the executor or administrator reside out of the county, or absconds, or conceals himself, so that the citation cannot be personally served, and shall neglect to render an account within thirty days after the time above prescribed, or if he shall neglect to render an account within thirty days after being committed when the attachment has been executed, his letters shall be revoked.

Vouchers for all payments.

SEC. 231. In rendering his account, the executor or administrator shall produce vouchers for all charges and expenses which he shall have paid, which vouchers shall be filed and remain in the court; and he may be examined on oath touching such payments, and also touching any property and effects of the deceased, and the disposition thereof. When any such voucher shall be required for other purposes, it may be withdrawn on leaving a certified copy on file. If any voucher be lost, or for other good reason the same cannot be produced on settlement, the payment may be proved by the oath of any competent witness.

Items less than twenty dollars excepted.

SEC. 232. On the settlement of his account, he may be allowed any item of expenditure not exceeding twenty dollars for which no voucher is produced, if such item be supported by his own oath positive to the fact of payment, specifying where and to whom the payment was made, and if such oath be uncontradicted; but such allowance, in the whole, shall not exceed five hundred dollars for payment in behalf of any one estate.

Notice of settlement; exceptions to account.

SEC. 233. When any account is rendered for settlement, the court or judge shall appoint a day for settlement thereof. The clerk shall thereupon give notice thereof by causing notices to be posted in at least three public places in the county. The notice shall set forth the name of the estate, and of the executor or administrator; and the day appointed for the settlement of the account, which shall be on some day of a term of court. The court or probate judge may order such further notice to be given as he may deem proper.

Exceptions how taken.

Sec. 234. On the day appointed, or any subsequent day to which the hearing may be adjourned by the court, any person interested in the estate may appear and file his exceptions in writing to the account and contest the same.

Minor to have guardian.

Sec. 235. If there be any minor interested who has no legally appointed guardian, the court shall appoint some disinterested person to represent him, who, on behalf of the minor, may contest the account as any other person having an interest might contest it, and who shall be allowed by the court for his services a reasonable compensation. The court shall also, if it deem it necessary, appoint an attorney to represent the absent heirs and devisees. All matters, including allowed claims not passed upon on the settlement of any former account, or on reading an exhibit, or on making a decree of sale, may be contested by the heirs for cause shown.

Referees may be appointed.

Sec. 236. The hearing and allegations of the respective parties may be adjourned from time to time as shall be necessary, and the court may appoint one or more referees to examine the accounts and make report thereon, subject to confirmation, and may allow a reasonable compensation to such referees, to be paid out of the estate of the deceased.

Settlement of account, when conclusive.

Sec. 237. The settlement of the account, and the allowance thereof by the court, or upon appeal, shall be conclusive against all persons in any way interested in the estate, saving, however, to all persons laboring under any legal disability, their rights to proceed against the executor or administrator, either individually or upon his bond, within two years after their respective disabilities shall cease; and in any action brought by any such person, the allowance and settlement of the account shall be deemed presumptive evidence of its correctness.

Proof of notice of settlement.

Sec. 238. The account shall not be allowed by the court until it be first proved that the notice has been given as required by this chapter, and the decree shall show that such proof was made to the satisfaction of the court, and shall be conclusive evidence of the fact.

Debts; order of payment.

SEC. 239. The debts of the estate shall be paid in the following order:

First—Funeral expenses.

Second—The expenses of the last sickness.

Third—Debts having preference by the laws of the United States.

Fourth—Judgments rendered against the deceased in his lifetime, and mortgages in the order of their date.

Fifth—All other demands against the estate.

Preference, extent of.

SEC. 240. The preference given in the preceding section to a mortgage shall only extend to the proceeds of the property mortgaged. If the proceeds of such property be insufficient to pay the mortgage, the part remaining unsatisfied shall be classed with other demands against the estate.

Estate insufficient; proportional dividends to be made.

SEC. 241. If the estate be insufficient to pay all the debts of any one class, each creditor shall be paid a dividend in proportion to his claim; and no creditor of any one class shall receive any payment until all those of the preceding class shall be fully paid.

Funeral expenses, payment of.

SEC. 242. It shall be the duty of the executor or administrator, as soon as he has sufficient funds in his hands, to pay the funeral expenses and the expenses of the last sickness and the allowance made to the family of the deceased, and he may retain in his hands the necessary expenses of administration; but he shall not be obliged to pay any other debt, or any legacy, until, as prescribed in this act, the payment has been ordered by the court.

Order for payment of creditors.

SEC. 243. Upon the settlement of the accounts of the executor or administrator at the end of the year, as required by this chapter, the court shall make an order for the payment of the debts as the circumstances of the case shall require. If there be not sufficient funds in the hands of the executor or administrator, the court shall specify in the decree the sum to be paid to each creditor. If the whole property of the estate be exhausted by such payment or distribution, such account shall be considered as a final account, and the executor or administrator shall be entitled to his discharge on producing and filing the necessary vouchers and proofs, showing that such payments have been made, and that he has fully complied with the decree of the court.

Disputed claims, disposition of.

SEC. 244. If there is any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or such part of the same as the holders would be entitled to if the claim were due, or established, or absolute, shall be paid into the court, where it shall remain, to be paid over to the party when he shall become entitled thereto; or, if he fail to establish his claim, to be paid over or distributed, as the circumstances of the estate require; *provided*, that if any creditor whose claim has been allowed but is not yet due shall appear and assent to a deduction therefrom of the legal interest for the time the claim has yet to run, he shall be entitled to be paid accordingly.

Executor or administrator liable after decree

SEC. 245. Whenever a decree shall be made by the probate court for the payment of creditors, the executor or administrator shall be personally liable to each creditor for his claim, or the dividend thereon, and execution may be issued on such decree, as upon a judgment in the district court, in favor of each creditor, and the same proceeding may be had under such execution as if it had been issued from the district court. The executor or administrator shall also be liable on his bond to each creditor.

Claims not included in order.

SEC. 246. When the accounts of the executor or administrator have been settled, and an order made for the payment of debts and distribution of the estate, no creditor whose claim was not included in the order of payment shall have any right to call upon the creditors who have been paid, or upon the heirs, devisees, or legatees to contribute to the payment of his claim; but if the executor or administrator shall have failed to give notice to the creditors as prescribed by this act, such creditor may recover on the bond of the executor or administrator the amount of his claim, or such part thereof as he would have been entitled to had it been allowed; *provided*, that this section shall not apply to any creditors whose claim was not due ten months before the day of settlement or whose claim was contingent and did not become absolute ten months before such day.

Payment of legacies and distribution of surplus.

SEC. 247. If the whole of the debts shall have been paid by the first distribution, the court shall proceed to direct the payment of legacies and the distribution of the estate among the heirs, legatees, or other persons entitled, as provided in the next chapter; but if there be debts remaining unpaid, or if, for other reason, the estate be not in a proper condition to be closed, the court shall give such extension of time as may be reasonable for a final settlement of the estate.

Final account, when to be rendered.

SEC. 248. At the time designated in the last section, or sooner, if within that time all the property of the estate shall have been sold, or there shall be sufficient funds in his hands for the payment of all debts due by the estate, and the estate be in a proper condition to be closed, the executor or administrator shall render a final account and pray a settlement of his administration.

Proceedings on neglect to render.

SEC. 249. If he neglect to render his account, the same proceedings may be had as prescribed in this chapter in regard to the first account to be rendered by him; and all the provisions of this chapter relating to the last-mentioned account, and the notice and settlement thereof, shall apply to his account presented for final settlement.

CHAPTER X.

Partition and Distribution of Estates.

SECTION 250. Petition of heirs; notice of; who may resist.
253. Decree for; where necessary; costs of.
257. Order for payment of bond; action on.
258. Distribution, when made; form of decree.
260. On whose application; of estate in common.
262. Real estate in different counties.
263. Notice necessary; petition for, when filed.
264. Partition; when heirs part with interest.
265. Shares, how set out; whole estate may be assigned to one in certain cases.
267. Payments for equalizing.
268. Estate may be sold, and proceeds divided.
269. Of estate in common; guardian for minor.
271. Report may be set aside.
272. When commissioners not necessary.
273. Advancements; agent for absentees, bond of.
276. Unclaimed estate; liability of agent.
278. Certificate to claimant.
279. Decree discharging executor.
280. Letters, etc., may issue after.

Petition of heirs, notice of, who may resist.

SEC. 250. At any time after the lapse of four months after the issuing of letters testamentary or of administration any heir, devisee, or legatee may present his petition to the court that the legacy or share of the estate to which he is entitled may be given to him upon his giving bonds, with security, for the payment of his proportion of the debts of the estate.

Notice, how given.

SEC. 251. Notice of the application shall be given to the executor or administrator personally, and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of an executor or administrator.

Who may resist.

SEC. 252. The executor or administrator, or any person interested in the estate, may appear and resist the application; or any other heir, devisee, or legatee may make a similar application for himself.

SEC. 253. If at the hearing it appear that the estate is but little indebted, and that the share of the party or parties applying may be allowed to him or them, without injury to the creditors of the estate, the court shall make a decree in conformity with the prayer of the applicant or applicants; *provided*, each one of them shall first execute and deliver to the executor or administrator a bond, in such sum as may be designated by the probate judge, and with sureties to be approved by him, payable to the executor or administrator, conditioned for the payment by the heir, legatee, or devisee, whenever required, of his proportion of the debts due from the estate. **Decree for, costs of.**

SEC. 254. Such decree may order the executor or administrator to deliver to the heir, legatee or devisee the whole portion of the estate to which he may be entitled, or only a part thereof. **Decree, scope of.**

SEC. 255. If in the execution of such decree any partition be necessary between two or more of the parties interested, it shall be made in the manner hereinafter prescribed. **Partition may be made.**

SEC. 256. The costs of the proceedings authorized by the preceding sections shall be paid by the applicant, or, if there be more than one, shall be apportioned equally amongst them. **Costs, how paid.**

SEC. 257. Whenever any bond has been executed and delivered under the provisions of the preceding sections, and the executor or administrator shall ascertain that it is necessary for the settlement of the estate to require the payment of any part of the money thereby secured, he shall petition the court for an order requiring the payment, and shall have a citation issued and served on the party bound requiring him to appear and show cause why an order shall not be made. At the hearing, the court, if satisfied of the necessity of such payment, shall make an order accordingly, designating the amount, and giving a time within which it shall be paid. If the money be not paid within the time allowed, an action may be maintained by the executor or administrator on the bond. **Order for payment of bond, action on.**

SEC. 258. Upon the final settlement of the accounts of the executor or administrator (or at any subsequent time, upon the application of the executor or administrator), or any heir, legatee or devisee, or the grantee of the heir, legatee or devisee, the court shall proceed to distribute the residue of the estate, if any, among the persons who are by law entitled. A statement of the receipts and disbursements of the executor or administrator since the rendition of his final accounts shall be **Distribution when made, form of decree.**

reported and filed at the time of making such distribution, unless distribution of the real estate only be made, and a settlement thereof, together with an estimate of the expenses of closing the estate, shall be made by the court, and shall be included in the decree; or the court or judge may order notice of the settlement of such supplementary account, and may refer the same, as in other cases of the settlement of accounts.

Parties to be named in decree.

SEC. 259. In the decree the court shall name the persons, and the proportion or parts to which each shall be entitled, and such persons shall have the right to demand and recover their respective shares from the executor or administrator or any person having the same in possession.

On whose application decree may be made.

SEC. 260. The decree may be made on the application of the executor or administrator or of any person interested in the estate, and shall only be made after notice has been given, or waived, and proceedings had in the manner provided in sections 150 to and including 193 of this act in regard to an application for the sale of land by an executor or administrator. The court may order such further notice to be given as it may deem proper. If partition be applied for, as hereinafter provided, such decree shall not divest the court of jurisdiction for the purposes of partition, unless the estate be finally closed by the decree of distribution.

Estate of tenants in common.

SEC. 261. When the estate, real or personal, assigned to two or more heirs, devisees, or legatees shall be in common and undivided, and the respective shares shall not be separated and distinguished, or when property of the estate shall be held in common and undivided with other parties, partition may be made by three disinterested persons, to be appointed commissioners for that purpose by the court or probate judge, who shall be duly sworn to the faithful discharge of their duties by any officer authorized to administer oaths. A certified copy of the order of their appointment and of the decree assigning and distributing the estate shall be issued to them as their warrant, and their oath shall be endorsed thereon. Upon consent of the parties, and when the court shall deem it proper and just, it shall be sufficient to appoint one commissioner only, who shall have the same authority and be governed by the same rules as if three were appointed.

Real estate in different counties.

SEC. 262. If the real estate shall be in different counties, the probate court may, if it shall judge proper, appoint different commissioners for each county, and in such cases the estate in each county shall be divided separately, as if there was no other estate to be divided; but the commissioner first appointed shall, unless otherwise directed by the probate court, make division of such real estate wherever situated within this Territory.

Notice necessary, petition for when filed.

SEC. 263. Such partition and distribution may be ordered on the petition of any of the persons interested; but before commissioners shall be appointed, or any partition shall be ordered, as directed in this chapter, notice shall be given to all persons interested who shall reside in this Territory, or their guardians, and to agents, attorneys or guardians, if there be any in this Territory, or such as reside out of the Territory either personally or by public notice, as the probate court shall direct. The petition for partition may be filed at any time before the decree of distribution, and attorneys, guardians and agents may be appointed and notice given; but the commissioners shall not be appointed until the decree has been made assigning the estate. But when the application is made solely to have partition between the estate administered upon and any other parties, such application may be made and such partition ordered at any time the court may direct.

When heirs part with interest.

SEC. 264. Partition of real estate may be made as provided in this chapter, although some of the original heirs or devisees may have conveyed their shares to other persons; and such shares shall be assigned to the person holding the same, in the same manner as they otherwise should have been to such heirs or devisees.

Shares, how set out.

SEC. 265. The several shares in the real and personal estate shall be set out to each individual in proportion to his right by such metes and bounds or description that the same can be easily distinguished, unless two or more of the parties interested shall consent to have their shares set out so as to be held by them in common and undivided.

When real estate cannot be divided, proceedings to be had.

SEC. 266. When any real estate cannot be divided without prejudice or inconvenience to the owners, the probate court may assign the whole to one or more of the parties entitled to shares therein who will accept it, always preferring the males to the females, and among children preferring the elder to the younger; *provided*, the party accepting the whole shall pay to the other parties interested their just proportion of the true value thereof, or shall secure the same to their satisfaction; or, in case of the minority of such party or parties, then to the satisfaction of his or her guardian; and the true value of the estate shall be ascertained and reported by commissioners.

Payments for equalizing. SEC. 267. When any tract of land or tenement shall be of greater value than either party's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed to make the partition to either of the parties who will accept it, giving preference as prescribed in the preceding sections; *provided*, the party so accepting shall pay or secure to one or more of the others such sums as the commissioners shall award to make the partition equal, and the commissioners shall make their award accordingly. But such partition shall not be established by the court until the sums so awarded shall be paid to the parties entitled to the same or secured to their satisfaction.

Estate may be sold, and proceeds divided. SEC. 268. When it cannot be otherwise fairly divided, the whole or any part of the estate, real or personal, may be recommended by the commissioners to be sold; and if the report be confirmed, the court may order a sale by the executor or administrator, or by a commissioner appointed for that purpose, and distribute the proceeds. The sale shall be conducted and reported upon and confirmed in the same manner and under the same rules as in ordinary cases of sales of land by an administrator under this act.

Partition of estate in common, how obtained. SEC. 269. When a partition of real estate among heirs or devisees shall be required, and such real estate shall be in common and undivided with the real estate of any other person, the commissioner shall first divide and sever the estate of the deceased from the estate in which it lies in common, and such division so made and established by the probate court shall be binding upon all the persons interested. Upon application by petition of the heirs or creditors, or any of them, the probate court may authorize the executor or administrator to bring suit for such partition in the district court. Such suit may also be brought by the executor when so authorized by the will.

Guardians to be appointed for minors. SEC. 270. Before any partition shall be made or any estate divided, as provided in this chapter, guardians shall be appointed for all minors and insane persons interested in the estate to be divided; and some discreet person shall be appointed to act as agent for such parties as reside out of this Territory, or an attorney for all absent heirs and persons interested; and notice shall be given to all parties interested in the partition, their guardians, agents and attorneys by the commissioners of the time when they shall proceed to make partition. The commisioners may take testimony, order surveys, and take such other steps as may be necessary to enable them to form a judgment upon the matters before them.

SEC. 271. The commissioners shall make report of their proceedings, and of the partition agreed upon by them, to the probate court in writing, and the court may, for sufficient reasons, set aside such report, and commit the same to the same commissioners or appoint others; and when such report shall be finally confirmed, a certified copy of partition made thereon, attested by the clerk under the seal of the court, shall be recorded in the office of the recorder of the county where the lands lie.. **Report may be set aside.**

SEC. 272. When the probate court shall make a decree assigning the residue of any estate to one or more persons entitled to the same, it shall not be necessary to appoint commisioners to make partition or distribution of such estate, unless the parties to whom the assignment shall be decreed, or some of them, shall require that such partition shall be made. **When commissioners not necessary.**

SEC. 273. All questions as to advancements made, or alleged to have been made, by the deceased to any heirs may be heard and determined by the probate court, and shall be specified in the decree assigning and distributing the estate and in the warrant to the commissioners, and the final decree of the probate court shall be binding on all parties interested in the estate. **Advancements.**

SEC. 274. When any estate shall be assigned by decree of the court, or distributed by commissioners, as provided in this chapter, to any person resident out of this Territory and having no agent therein, and it shall be necessary that some person be authorized to take possession and charge for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absent person in the partition and distribution. **Agent for absentees.**

SEC. 275. Such agent shall give a bond to the judge of probate, to be approved by him, faithfully to manage and account for such estate before he shall be authorized to receive the same; and the court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses. **Bond of such agent.**

SEC. 276. When the estate shall remain in the hands of the agent unclaimed for one year, it shall be sold under the order of the court, and the proceeds, deducting the expenses of the sale to be allowed by the court, shall be paid into the Territorial treasury. When the payment is made, the agent shall take from the treasurer duplicate **Unclaimed estate.**

receipts, one of which he shall file in the office of the territorial controller and the other in the probate court.

Liability of agent. SEC. 277. The agent shall be liable on his bond for the care and preservation of the estate while in his hands and for the payment of the proceeds of the sale, as required by the preceding section, and may be sued thereon by any person interested.

Certificate of claimant. SEC. 278. When any person shall claim the money paid into the treasury, the probate court making the distribution, being first satisfied of his right, shall grant him a certificate under seal; and upon the presentation of the certificate to the territorial controller, he shall draw his warrant on the treasurer for the amount.

Decree discharging executor or administrator. SEC. 279. When the estate has been fully administered, and it is shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up, under order of the court, all the property of the estate to the parties entitled, and performed all acts lawfully required of him, the court shall make a decree discharging him from all liability to be incurred thereafter.

Letters may afterwards be issued. SEC. 280. The final settlement of an estate shall not prevent a subsequent issuance of letters testamentary or of administration with the will annexed should other property of the estate be discovered or should it become necessary or proper from any cause that letters should be again issued.

CHAPTER XI.

Removal of Executors and Administrators in Certain Cases.

SECTION 281. Suspension of powers of executors, etc.
282. Special administrators, suspension of.
283. Proceedings on; who may appear.
235. Executor absconding.
286. Attachment to compel attendance.

Suspension of powers of executors, etc. SEC. 281. Whenever the probate judge has reason to believe, from his own knowledge or from credible information, that any executor or administrator has wasted, embezzled or mismanaged, or is about to waste or embezzle the property of the estate committed to his charge, or has committed, or is about to commit a fraud upon the estate, or has been incompetent to act, or has permanently removed from the Territory, or has wrongfully neglected the estate, or has long neglected to perform the necessary acts of such executor or administrator, it shall be his duty, by an order entered upon the minutes of the court, to suspend the powers of such executor or administrator until the matter can be investigated.

During suspension, a special may be appointed.

SEC. 282. During the suspension of the powers of the executor or administrator, under the authority of the preceding section, the probate judge or court may, if the condition of the estate requires it, appoint a special administrator to take charge of the effects of the estate, who shall give the bond, and account as other special administrators are required to do.

Proceedings in suspension.

SEC. 283. When such suspension has been made, notice thereof shall be given to the executor or administrator, and he shall be cited to appear and show cause why his letters should not be revoked. If he fail to appear in obedience to the citation, or, if appearing, the court shall be satisfied that there exists cause for his removal, his letters shall be revoked, and letters of administration granted anew as the case may require.

Who may appear.

SEC. 284. At the hearing any person interested in the estate may appear and file his allegations in writing, showing that the executor or administrator should be removed. Such allegations shall be heard and determined by the court.

Absconding executor or administrator.

SEC. 285. If the executor or administrator has absconded or concealed himself, or has removed or absented himself from the Territory, notice may be given of the pendency of the proceedings, by publication, in such manner as the court may direct; and the court may proceed upon such notice as if the citation had been personally served.

Attachment to compel attendance.

SEC. 286. In the proceedings authorized by the preceding sections of this chapter for the removal of an executor or administrator the court may compel his attendance by attachment, and may compel him to answer questions on oath touching his administration; and upon his refusal so to do, may commit him until he obey, or may revoke his letters, or both.

CHAPTER XII.

Miscellaneous Proceedings.

SECTION 287. Executor may refer claim to referees.
288. Proceedings on reference.
289. Persons interested may contest validity of claim;

SECTION 290. Orders, etc., to be entered; personal notice, how given.
292. Citation, how served and returned.
294. Clerk of court, powers of; process.
296. Form of practice; taking testimony in other counties.
297. Issue of fact; costs.
298. Attorney for minors, etc.; compensation.
299. Decree of homestead to be certified.
300. Appeals to district court, when and how taken.
302. When cognizable, papers relative to, to clerk of district court.
304. May be reversed or affirmed.
305. Trial by jury; costs of.
307. Affirmance, etc., to be certified.
308. Appeal to Supreme Court; when taken; how made.
310. Statement of case; reversal or affirmation; costs.
313. Appeals, when complete.
314. Executor, etc., removed; successor of.

Executor may refer claims to referees.

SEC. 287. If the executor or administrator doubt the correctness of any claim presented to him, he may enter into an agreement in writing with the claimant to refer the matter in controversy to some disinterested person or persons to be approved by the probate judge. Upon filing the agreement and approval of the probate judge in the office of the clerk of the district court for the county in which the letters testamentary or of administration were granted, the clerk shall, either in vacation or term, enter a minute of the order referring the matter in controversy to the person selected; or if the parties consent, a reference may be had in the probate court, and the report of the referees, if confirmed, shall establish or reject the claim the same as if it had been allowed or rejected by the executor or administrator and the probate judge.

Proceedings on reference.

SEC. 288. The referees shall thereupon proceed to hear and determine the matter, and make their report thereon to the court in which the appointment shall have been entered. The same proceedings shall be had in all respects, and the referees shall have the same powers, be entitled to the same compensation, and subject to the same control as in other cases of reference. The court may set aside the referees, or appoint others in their place, or may set aside or confirm the report, and adjudge the costs as in actions against executors or administrators, and the judgment of the court thereon shall be valid and effectual in all respects, as if the same had been rendered in a suit commenced by ordinary process.

Validity of claim, who may contest

SEC. 289. Any creditor or other person interested in the settlement of an estate may contest the validity or correctness of any claim against such estate, whether the same has been allowed by the executor or administrator or not, and may require the same to be regularly proved and established in the probate court in due form of law.

Orders and decrees to be recorded

SEC. 290. All orders and decrees made by the probate court during its terms shall be entered at length in the minute book of the court, and also all orders which the probate judge is empowered to make out of term time, and which are by this act specially required to be so entered. Upon the close of each term, the judge shall sign the minutes of the proceedings. When any publication is ordered, such publication shall be made daily, or otherwise, as often during the prescribed period as the paper is regularly issued, unless otherwise provided in this act. The court or judge may, however, prescribe a less number of publications during the period prescribed.

Notices, how given.

SEC. 291. Whenever personal notice is required by this act, or the act to provide for the appointment and prescribe the duties of guardians, to be given to any party to a proceeding in the probate court, and no other mode of giving notice is prescribed, it shall be given by citation, issued from the court, signed by the clerk, and under the seal of the court, directed to the sheriff of the proper county, and requiring him to cite such person to appear before the court or judge, as the case may be, at a time and place to be named in the citation; or the citation may be addressed directly to the party to be cited, and may be served in like manner as a summons issued from the district court. In the body of the citation shall be briefly stated the nature or character of the proceeding.

Citations, how served and returned.

SEC. 292. The officer to whom the citation is directed shall serve it by delivering a copy to the person therein named, or to each of them if there be more than one, and shall return the original to the court according to its direction, endorsing thereon the time and manner of service. All proofs of publication, or other mode or modes of giving notice or serving papers, may be made by the affidavit of any person competent to be a witness, which affidavit shall be filed, and shall constitute *prima facie* evidence of such publication or notice of service.

Citations, when served

SEC. 293. When no other time is specially prescribed, citation shall be served at least five days before the return day thereof.

Clerk of probate court, powers of.

SEC. 294. Unless otherwise specially prescribed, the clerk of the probate court shall have power to administer all oaths necessary and proper to be taken touching any matter pending in the probate court or in any manner connected with any proceedings of which the court has jurisdiction, and he shall have power to issue citations and subpœnas upon the application of any party without the order of the judge, except in those cases in which such order is specially required by law for the issuing of a citation.

Clerk to sign all processes.

SEC. 295. All writs and processes issued from the probate court shall be signed by the clerk and authenticated with the seal of the court, except subpœnas, notices and publications, which need not be under seal.

Practice in the probate courts.

Testimony of witnesses taken in other counties.

SEC. 296. The practice in the district court shall be applicable to proceedings in the probate court so far as the same does not conflict with any enactment specially applicable to the probate court or is not inconsistent with the provisions of this act or the act to provide for the appointment and prescribe the duties of guardians. For the purpose of taking the testimony of a witness or witnesses in other counties of this Territory, or in other States, Territories and countries, a commission may be issued whenever, in the discretion of the court or probate judge, the same may be ordered; and when ordered, the formalities attending the issuance, execution and return thereof shall be similar to those prescribed in the case of a commission issued from the district court, so far as the same are applicable. When issued *ex parte*, no cross-interrogatories shall be necessary, unless by direction of the court or probate judge; nor shall notice be necessary unless the court or judge shall so order. The court or judge may annex cross-interrogatories, or may refer the matter to a referee, to be by him appointed for that purpose, and when notice is so ordered, the court or judge shall prescribe the mode of giving such notice—whether by personal service, or by posting notices, or by publication.

Issues of fact, and questions of costs.

SEC. 297. All issues of fact shall be disposed of in the same manner as is by law provided upon the trial of issues of fact in the district court. All questions of costs may be determined by the probate court, and execution may issue therefor in accordance with the order of the probate court.

Attorneys for minors, and compensation of.

SEC. 298. When upon any proceeding in an estate an attorney has been appointed for minors or absent persons in interest in the estate, such attorney shall represent such parties in any subsequent proceedings had, unless on such subsequent proceedings another person be appointed, and provided such attorney be present in court in such subsequent proceedings. When any such attorney has been appointed, and when the probate judge has appointed a referee to take proofs, make computation, or perform other service, reasonable compensation may be allowed out of the estate to such attorney and to each referee for the service he may have rendered.

Decree of homestead to be certified.

Sec. 299. When a decree is rendered setting apart a homestead, or making distribution of real estate, or determining any other matter affecting the title to real estate, a certified copy of such decree shall be recorded in the office of the recorder of the county in which the land is situated.

Appeals to District Court.

Sec. 300. Any person interested in, or to be affected by, and who shall be aggrieved by any order, allowance, sentence, decree or denial of any probate court or judge, or any other act in his official capacity, may appeal therefrom to the district court of the judicial district in which said probate court is held.

Appeals, how taken.

Sec. 301. The appeal may be taken within twenty pays after the order, allowance, sentence, decree, denial, or any other official act of the probate court or judge is made and entered in the minutes of the court. It shall be made by filing with the clerk of the probate court a notice stating the appeal from the order, decree, judgment, sentence or allowance, or some specific part thereof, and by executing an undertaking in the same manner and to the same effect as upon appeal from the district court to the Supreme court.

Appeals, when cognizable.

Sec. 302. Appeals shall be cognizable at the next term of the district court which shall be holden after the expiration of twenty-four days after such appeal shall have been perfected.

Clerk to transmit papers, when.

Sec. 303. Upon such appeal being perfected, and upon the clerk of said court being paid the fees allowed him by law for the services herein required of him, he shall immediately transmit to the clerk of the district court, under his official seal, a transcript of the record, proceedings and all papers relative to the cause appealed from.

May reverse or affirm.

Sec. 304. The court above may reverse or affirm, in whole or in part, the sentence or proceeding appealed from, and may make such decree or order therein as the judge of the probate court should have made, and shall remit the case to the court from whence it came for further proceedings, unless such reversal or affirmance be appealed from as hereinafter provided.

Trial by jury.

Sec. 305. If upon hearing an appeal in the district court any question of fact shall occur that is proper for a jury to try, the court shall, upon application, cause it to be tried by a jury upon such issue of fact, to be formed under the direction of the court.

Costs, how awarded.

SEC. 306. If the decision be affirmed, the district court shall award costs, to be paid by the party appealing, either personally or out of the estate of the deceased, as he shall direct. If the decision be reversed, costs shall, in like manner, be awarded against the party maintaining the decision of the probate judge or court, either personally or out of the estate of the deceased.

Affirmance or reversal to be certified.

SEC. 307. Such affirmance, or such reversal, shall be certified to the probate court or judge whose decision was appealed from by the district court, with the award of costs made by him. Such probate judge shall enforce the payment of the costs so awarded in the same manner as if such award had been made by him.

Appeal to Supreme Court.

SEC. 308. Any person interested in, or affected by, and aggrieved by the decision of the district court, affirming, reversing or modifying the decision, sentence or order of the probate court or judge, may appeal to the Supreme Court of this Territory; *provided*, that if the amount, exclusive of costs, does not equal one thousand dollars, the court or judge shall order the case to be remitted to the probate court, that the recovering party shall have execution for his costs.

Appeal to Supreme Court, how taken.

SEC. 309. The appeal provided for in the preceding section may be taken within twenty days after the order, decree or judgment is made and entered in the minutes of the court. It shall be made by filing with the clerk of the district court a notice stating the appeal from the order, decree, or judgment, or some specific part thereof, and by executing an undertaking or giving security on such appeal in the same manner and to the same extent as upon other appeals to the Supreme Court from the district court.

Statement of case.

SEC. 310. If a party who has the right to appeal to the Supreme Court wishes a statement of the case to be annexed to the record, he shall prepare and file the same within five days after the entry of the order, judgment or decree.

Supreme Court may reverse, affirm, or modify.

SEC. 311. Upon an appeal from the District Court, as hereinbefore provided, the appellate court may reverse, affirm, or modify the judgment, order or decree appealed from in the respect mentioned in the notice of appeal, and as to any or all of the parties, and shall certify the same to the district court appealed from.

Costs, how awarded.

SEC. 312. When it is not otherwise prescribed by law, the probate court, or the Supreme Court, on appeal, may, in its discretion, order costs to be paid by any party to the proceedings, or out of the estate, as justice may require. Execution for costs may issue out of the probate court.

SEC. 313. The appeal of any executor or administrator to the district court, or to the Supreme Court, as herein provided for, who has given an official bond, shall be complete and effectual without the undertaking hereinbefore required.

Appeals, when complete.

SEC. 314. When an order or decree appointing an executor or administrator or guardians shall be reversed on appeal, all lawful acts in administration upon the estate performed by such executor, administrator or guardian, if he shall qualify, shall be as valid as if such order or decree had been affirmed. When any executor or administrator resigns or is removed, a successor may be appointed, if a necessity therefor exists, without again proving the death and residence of the testator or intestate.

Effect of reversal.

Resignation or removal of executor or administrator

CHAPTER XIII.

Descents and Distribution.

SECTION 315. Descents and distribution.
316. Illegitimate child.
318. Degrees of kindred, how computed.
319. Advancements.
324. Inheritance of husband and wife.
325. By right of representation.

SEC. 315. When any person having title to any estate not otherwise limited by marriage contract shall die intestate as to such estate, it shall descend and be distributed, subject to the payment of his or her debts, in the following manner:

Descents and distribution.

First—If there be a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband or wife and child, or issue of such child. If there be a surviving husband or wife, and more than one child living, or one child living and the lawful issue of one or more deceased children, one-third to the surviving husband or wife, and the remainder, in equal shares, to his or her children and to the lawful issue of any deceased child by right of representation. If there be no child of the intestate living at his or her death, the remainder shall go to all of his or her lineal descendants; and if all the said descendants are in the same degree of kindred to the intestate, they shall share equally; otherwise, they shall take according to the right of representation.

Descents and distribution.

Second—If he or she shall leave no issue, the estate shall go in equal shares to the surviving husband or wife and to the intestate's father. If he or she shall leave no issue, or husband or wife, the estate shall go to his or her father.

Third—If there be no issue, nor husband, nor wife, nor father, then in equal shares to the brothers and sisters of the intestate, and to the children of any deceased brother or sister by right of representation; *provided*, that if he or she shall leave a mother also, she shall take an equal share with the brothers and sisters.

Fourth—If the intestate shall leave no issue, nor husband, nor wife, nor father, and no brother or sister living at his or her death, the estate shall go to his or her mother, to the exclusion of the issue (if any) of deceased, brothers or sisters.

Fifth—If the intestate shall leave a surviving husband or wife, and no issue, and no father, mother, brother or sister, the whole estate shall go to the surviving husband or wife.

Sixth—If the intestate shall leave no issue, nor husband, nor wife, and no father, mother, brother nor sister, the estate shall go to the next of kin in equal degree; excepting that, when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestors shall be preferred to those claiming through an ancestor more remote; *provided, however*,

Seventh—If any person shall die leaving several children, or leaving one child, and the issue of one or more other children, and any such surviving child shall die under age, and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent shall descend in equal shares to the other children of the same parent and to the issue of any such other children who shall have died by right of representation.

Eighth—If at the death of such child who shall die under age, and not having been married, all the other children of his said parent shall also be dead, and any of them shall have left issue, the estate that came to such child by inheritance from his said parent shall descend to all the issue of other children of the same parent; and if all the said issue are in the same degree of kindred to said child, they shall share the said estate equally; otherwise, they shall take according to the right of representation.

Ninth—If the intestate shall leave no husband or wife, nor kindred, the estate shall escheat to the Territory for the support of common schools.

Illegitimate children.

SEC. 316. Every illegitimate child shall be considered as an heir of the person who shall, in writing, signed in the presence of a competent witness, have acknowledged himself to be the father of such child; and shall in all cases be considered as heir of his mother, and shall inherit his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he shall not be allowed to claim, as representing his father or mother, any part of the estate of his or her kindred, either lineal or collateral, unless before his death his parents shall have intermarried, and his father, after such marriage, shall have acknowledged him as aforesaid, or adopted him into his family; in which case such child and all the legitimate children shall be considered as brothers and sisters, and on the death of either of them intestate and without issue, the others shall inherit his estate, and be his heirs, as hereinbefore provided, in like manner as if all the children had been legitimate; saving to the father and mother respectively their rights in the estate of all the said children, as provided hereinbefore, in like manner as if all had been legitimate. The issue of all marriages deemed null in law, or dissolved by divorce, shall be legitimate.

Estates of illegitimate children.

SEC. 317. If any illegitimate child shall die intestate, without lawful issue, his estate shall descend to his mother, or, in case of her decease, to her heirs-at-law.

Degrees of kindred, how computed.

SEC. 318. The degrees of kindred shall be computed according to the rules of the civil law, and kindred of the half blood shall inherit equally with those of the whole blood in the same degree, unless inheritance come to the intestate by descent, devise or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestors shall be excluded from such inheritance.

Advancements.

SEC. 319. Any estate, real or personal, that may have been given to the intestate in his lifetime as an advancement to any child, or other lineal descendant, shall be considered as a part of the estate of the intestate, so far as it regards the division and distribution thereof among his issue, and shall be taken by such child or other lineal descendant toward his share of the estate of the intestate.

SEC. 320. If the amount of such advancement shall exceed the share of the heir so advanced, he shall be excluded from any further portion in the division and distribution of the estate, but he shall not be required to refund any part of such advancement; and if the amount so received shall be less than his share, he shall be entitled to as much more as will give him his full share of the estate of the deceased.

Gifts and grants, how deemed.

SEC. 321. All gifts and grants shall be deemed to have been made in advancement if they are expressed in the gift or grant to be so made, or if charged in writing by the intestate as an advancement, or acknowledgment in writing as such, by the child or other descendant.

Value of advancements how estimated

SEC. 322. If the value of the estate so advanced shall be expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment of the party receiving it, it shall be considered as of that value in the division and distribution of the estate; otherwise, it shall be estimated according to its value when given as nearly as the same can be ascertained.

Death of party to whom advancement was made, effect of.

SEC. 323. If any child or other lineal descendant so advanced shall die before the intestate, leaving issue, the advancement shall be taken into consideration in the division and distribution of the estate, and the amount thereof shall be allowed accordingly by the representatives of the heirs so advanced, in like manner as if the advancement had been made directly to them.

Inheritance of husband and wife; application of provisions.

SEC. 324. The provisions of this act as to the inheritance of the husband and wife from each other apply only to the separate property of the intestate.

By "right of representation."

SEC. 325. Inheritance or succession "by right of representation" takes place where the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents.

APPROVED, *January* 6, 1875.

AN ACT

CONCERNING GUARDIANS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Appointment of guardians on petition.
2. When minor may nominate guardian; when not:
3. When the judge may appoint.
4. Nomination after fourteen.
5. Father or mother entitled to be guardian.
6. Guardian to have custody of ward.
7. Powers and duties of guardian.
8. Bond of guardian, conditions of.
9. Maintenance of minor from his own property.
10. Father may appoint guardian.
11. Guardian *ad litem.*
12. Guardians of insane and other incompetent persons.
13. When court shall appoint.
14. Powers and duties of such guardians.
15. Guardian to pay debts, etc.
16. To settle and sue for all accounts, etc.
17. Manage estate; maintain ward; sell real estate.
18. Partition of real estate.
19. Inventory and appraisement.
20. When may sell property.
21. When sale made upon order of court.
22. Application of proceeds of sale.
23. Investment of proceeds.
24. Order of sale, how obtained.
25. Notice to next of kin, etc., how given; proceedings, how conducted.
26. Order, how served and published.
27. Hearing of application.
28. Who examined; compelling attendance.
29. Cost awarded prevailing party.
30. Order of sale, what to specify.
31. Bond before selling.
32. Notice of sale; proceedings thereon.
33. Limit of order of sale.

SECTION 34. Limitation of action by ward to recover estate sold.
35. Accounts of guardians.
36. Investment and management.
37. Removal, resignation and new appointment.
38. Marriage or return of sanity terminates guardianship.
39. New bond; discharge of sureties.
40. Bond preserved; action thereon.
41. Limitation of action on bond.
42. Charges of wrongdoing; proceedings thereon.
43. Guardian of non-residents, appointment of.
44. Powers and duties of guardian of non-residents.
45. Bond, inventory, account of such guardians.
46. The first appointed to control.
47. Expenses and compensation allowed.
48. May appoint more than one guardian.
49. Joint account verified by any one of guardians.
50. Terms of sale of real estate; security of payment.
51. Removal of non-resident ward's property.
52. Proceedings on removal.
53. Discharge of person in possession.
54. Letters, bonds, etc, must be recorded, where.
55. Power of judge at chambers; probate practice act to apply.
56. Jurisdiction of district court not affected.

Appointment of guardians on petition.

SECTION 1. The probate court of each county, when it shall appear necessary or convenient, may appoint guardians to the persons and estates, or either of them, of minors who have no guardian legally appointed by will, and who are inhabitants or residents in the same county where the estate may be situated, or who shall reside without the Territory and have any estate within the county, and such appointment may be made on the application by petition of a relative or any person interested in or befriending such minor. Before making such appointment the judge shall cause such notice to be given to the relatives of the minor residing in the county, and to any person under whose care such minor may be, as he shall, on due inquiry, deem reasonable.

When minor may nominate guardian.

SEC. 2. If the minor is under the age of fourteen years, the court may nominate and appoint his guardian; and if he is above the age of fourteen years, he may nominate his own guardian, who, if approved by the court, shall be appointed accordingly.

When the judge may appoint.

SEC. 3. If the guardian nominated by the minor shall not be approved by the court, or if the minor shall reside out of the Territory, or if, after being duly cited by the judge, he shall neglect for ten days to nominate a suitable person, the court may nominate and appoint the guardian, in the same manner as if the minor were under the age of fourteen years.

Nomination after fourteen.

SEC. 4. When a guardian has been appointed by the court for a minor under the age of fourteen years, the minor, at any time after he attains that age, may nominate his own guardian, subject to the approval of the probate judge.

Father or mother entitled to be guardian. Sec. 5. The father of the minor, if living, and in case of his decease, the mother, while she remain unmarried, being themselves respectively competent to transact their own business, and not otherwise unsuitable, shall be entitled to the guardianship of the minor.

Guardian to have custody of ward. Sec. 6. If the minor have no father or mother living and competent to have the care of the education of such minor, the guardian so appointed shall have the custody and tuition of his ward.

Powers and duties of guardian. Sec. 7. Every guardian appointed as aforesaid shall have the custody and tuition of the minor and the care and management of the minor's estate until the minor, if a male, shall arrive at the age of twenty-one years, or shall marry; and if a female, shall arrive at the age of eighteen years, or shall marry; or until the guardian shall be discharged according to law.

Bond of guardian, conditions of. Sec. 8. Before the order appointing any one guardian under this act shall take effect, and before letters shall issue, the judge shall require of such person a bond to the minor, with sufficient sureties, to be approved by the judge, and in such sum as he shall order; and when the penal sum of the bond exceeds two thousand dollars, each of the sureties may become liable for portions thereof, making in the aggregate the whole penal sum. And said bond shall be conditioned that the guardian shall faithfully execute the duties of his trust according to law, and the following conditions shall be deemed to form a part of said bond without being expressed therein:

First—To make a true inventory of all the estate, real and personal, of his ward that shall come to his possession or knowledge, and to return the same within such time as the judge shall order.

Second—To dispose of and manage all such estate according to law and for the best interest of the ward, and faithfully to discharge his trust in relation thereto, and also in relation to the care, custody and education of the ward.

Third—To render an account, on oath, of the property, estate and moneys of the ward in his hands, and all proceeds or interests derived therefrom, and of the management and disposition of the same within three months after his appointment and at such other times as the court shall direct; and at the expiration of his trust to settle his accounts with the court, or with the ward, if he be of full age, or his legal representatives, and to pay over and deliver all the estate, moneys and effects remaining in his hands, or due from him, on such settlement to the person or persons who shall be lawfully entitled thereto.

Upon filing such bond, duly approved, letters of guardianship shall issue to the person appointed. In form, the letters shall be substantially the same as letters of administration, and the oath of the guardian shall be endorsed thereon that he will perform the duties of his office as such guardian according to law.

Maintenance of minor from his own property.

SEC. 9. If any minor who has a father living has property the income of which is sufficient for his maintenance and education in a manner more expensive than his father can reasonably afford, regard being had to the situation of the father's family and to all the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed out of the income of his property, in whole or in part, as shall be judged reasonable, and shall be directed by the court, and charges therefor may be allowed accordingly in the settlement of the accounts of his guardian.

Father or mother may appoint guardian.

SEC. 10. The father of any child who is a minor may by his last will and testament appoint a guardian or guardians of such child, whether born before or after the time of making such will; and in case of the death of the father, the mother of such child may in like manner appoint a guardian or guardians, if such child shall not then have any legally appointed guardian; and every testamentary guardian shall give bonds and qualify, and shall have the same powers and perform the same duties with regard to the person and estate of such minors as guardians appointed by the probate court, except as far as the said powers and duties may have been legally modified, enlarged or changed by the will by which such guardian was appointed.

Guardian *ad litem*.

SEC. 11. Nothing contained in this act shall affect or impair the power of any court to appoint a guardian to defend the interest of any minor interested in any suit or matter pending therein, nor to appoint or allow any person, as the next friend of a minor, to commence and prosecute any suit in his behalf.

Guardians of insane and other incompetent persons.

SEC. 12. Whenever it shall be represented to the probate judge, upon petition under oath, by any relative or friend of any insane person, or of any person who by reason of extreme old age or other cause is mentally incompetent to manage his property, said judge shall cause a notice to be given to the supposed insane or incompetent person of the time and place of hearing the case not less than five days before the time so appointed; and shall cause such person, if able to attend, to be produced before him on the hearing.

When court shall appoint. SEC. 13. If after a full hearing and examination on said petition it shall appear to the court that the person in question is incapable of taking care of himself and managing his property, the court shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

Powers and duties of such guardians. SEC. 14. Every guardian so appointed, as provided in the preceding section, shall have the care and custody of the person of his ward and the management of all his estate until such guardian shall be legally discharged, and he shall give bond to such ward in like manner and with like conditions as before prescribed with respect to the guardian of a minor.

Guardian to pay debts, etc. SEC. 15. Every guardian appointed under the provisions of this act, whether for a minor or any other person, shall pay all just debts due from the ward out of his personal estate and the income of his real estate, if sufficient, and if not, then out of his real estate, upon obtaining an order for the sale thereof, and disposing of the same in the manner provided by law.

To settle and sue for all accounts etc. SEC. 16. Every such guardian shall also settle all accounts of the ward, and demand, sue for and receive all debts due to him, or may, with the approbation of the probate judge, compound for the same, and give a discharge to the debtor, on receiving a fair and just dividend of his estate and effects; and he shall appear for and represent his ward in all legal suits and proceedings, unless where another person is appointed for that purpose as guardian or next friend.

Manage estate; maintain ward; sell real estate. SEC. 17. Every guardian shall manage the estate of his ward frugally and without waste, and apply the income and profits thereof, as far as may be necessary, for the comfortable and suitable maintenance and support of the ward and his family, if there be any; and if such income and profits be insufficient for that purpose, the guardian may sell the real estate, upon obtaining an order therefor, as provided by law, and shall apply the proceeds of such sale, as far as may be necessary, for the maintenance and support of the ward and his family, if there be any.

Partition of real estate. SEC. 18. The guardian may join in and assent to the partition of the real estate of the ward in the cases and in the manner provided by law.

Inventory and appraisement. SEC. 19. Every guardian shall return to the court an inventory of the estate of his ward within three months after his appointment and at such other times as the court may order, and he shall return to the court additional inventories whenever any further property belonging to said estate not included in previous inventories shall come into his hands; and if there be no estate, he shall return that fact under oath. Each of such inventories shall be sworn to by the guardian, and the property comprised therein shall be appraised by appraisers, who shall be appointed, and shall proceed in the manner provided by the laws regulating the settlement of the estates of deceased persons; and when so appraised, it shall be recorded by the clerk of the court in a proper book to be kept in his office for that purpose.

When may sell property.

SEC. 20. When the income of the estate of any person under guardianship shall not be sufficient to maintain the ward and his family, or to educate the ward when a minor, his guardian may sell his real or personal estate for that purpose, upon obtaining an order therefor, and proceeding therein as provided in this act.

When sale made upon order of court.

SEC. 21. When it shall appear to the satisfaction of the court, upon the petition of the guardian, that it would be for the benefit of his ward that his real estate, or some part thereof, should be sold, in order that the proceeds thereof may be put out at interest or invested in some productive stock, or in the improvement or security of any other real estate of his ward, his guardian may sell the same for such purpose, upon an order therefor, and proceeding therein as provided in this act.

Application of proceeds of sale.

SEC. 22. If the estate is sold for the purpose mentioned in the twentieth section of this act, the guardian shall apply the proceeds of the sale to such purposes, so far as necessary, and shall put out the residue, if any, at interest, or invest it in the best manner in his power, until the capital shall be wanted for the maintenance of the ward and his family, or the education of his children, or for the education of the ward when a minor, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

Investment of proceeds.

SEC. 23. If the estate is sold for the purpose of putting out or investing the proceeds, as provided in this act, the guardian shall make the investment, according to his best judgment, or in pursuance of any order that may be made by the court.

Order of sale, how obtained.

SEC. 24. To obtain an order for such sale, the guardian shall present to the court by which he was appointed guardian a petition therefor, setting forth the condition of the estate of his ward and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale, which petition shall be verified by the oath of the petitioner.

Notice to next of kin, etc., how given.

SEC. 25. If it shall appear to the court or judge from such petition that it is necessary, or would be beneficial to the ward, that such real estate, or some part of it, should be sold, or that the real and personal estate should be sold, the court or judge shall thereupon make an order directing the next of kin of the ward and all persons interested in the estate to appear before such court at a time and place therein specified—not less than four, nor more than eight weeks from the time of making such order—to show cause why an order should not be granted for the sale of such estate. If it appear that it is necessary or would be beneficial to the ward to sell the personal estate, or some part of it, the same proceedings shall be thereupon had in reference to notice of the publication and to ordering the sale and making such sales as are provided in relation to sales of personal estates by executors or administrators.

Proceedings, how conducted.

Order, how served and published.

SEC. 26. A copy of the order shall be personally served on the next of kin of such ward and on all persons interested in the estate at least fourteen days before the hearing of the petition, or shall be published at least three successive weeks in some newspaper printed in the county, to be designated by the court or judge; or if there shall be none printed in the county, then in such newspaper as may be specified by the court or judge in such order.

Hearing of application.

SEC. 27. The court, at the time and place appointed in such order, or such other time as the hearing shall be adjourned to, upon proof of the due service or publication of the order, shall hear and examine the proofs and allegations of the petitioner and of the next of kin, and all other persons interested in the estate who shall think proper to oppose the application.

Who examined; compelling attendance.

SEC. 28. On such hearing the guardian may be examined on oath, and witnesses may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the court or judge in the same manner and with like effect as in other cases.

Costs awarded the prevailing party.

SEC. 29. If any person shall appear and object to the granting of any order prayed for under the provisions of this act, and it shall appear to the court that either the petition or objection thereto is unreasonable, said court may, in its discretion, award costs to the party prevailing, and enforce the payment thereof.

Order of sale, what to specify.

SEC. 30. If after a full examination it shall appear to the court either that it is necessary or would be for the benefit of the ward that his real estate, or some part of it, should be sold, such court may grant an order therefor, specifying therein for which of the causes or reasons mentioned in sections twenty and twenty-one of this act said sale is necessary or proper; and said court may, if the same has been prayed for in the petition, order such sale to be made, at either public or private sale, upon like proceedings and in the same manner as provided by law in case of a sale of real estate by an executor or administrator, and subject to the same proceedings in relation to the confirmation or rejection of the sale or the resale thereof.

Bond required before selling.

SEC. 31. Every guardian authorized to sell real estate as aforesaid shall, before such sale, give bond to the ward, with sufficient sureties, to be approved by the probate judge, with condition to sell the same in the manner prescribed by law for sales of real estate by executors and administrators, and to account for and dispose of the proceeds of the sale in the manner prescribed by law.

Notice of sale: proceedings thereon.

SEC. 32. If an order of sale direct the real estate of the ward to be sold at public auction, the guardian shall give public notice of the time and place of sale, and shall proceed therein in like manner as prescribed in the case of a sale of land by an executor or administrator. The same proceedings shall be had as to the return of the sale, whether public or private, and the confirmation thereof, and the order to execute a conveyance, as are prescribed in regard to the sales of land made by executors or administrators; and the confirmation shall have the same force and effect.

Limit of order of sale.

SEC. 33. No order of sale granted in pursuance of this act shall be in force more than one year after granting the same.

Limitation of action by ward to recover estate sold.

SEC. 34. No action for the recovery of any estate sold by a guardian under the provisions of this act shall be maintained by the ward, or by any person claiming under him, unless it be commenced within three years next after the termination of the guardianship, excepting only that minors and others under legal disability to sue at the time when the cause of action shall accrue may commence their action at any time within three years next after the removal of their respective disabilities.

Account of guardians.

SEC. 35. The guardian shall, upon the expiration of a year from the time of his appointment, and as often thereafter as he may be required, present his account to the probate court for settlement and allowance, and all the laws relative to the accounts of executors and administrators shall govern in regard to the accounts of a guardian so far as they can be made applicable.

Investment and management.

SEC. 36. The probate court, on the application of a guardian, or of any person interested therein, as the probate judge may direct, may authorize and require the guardian to invest the proceeds of sales and also any other money in his hands, in real estate, or in any other manner that shall be most to the interest of all concerned therein, and the said court may make such other orders and give such directions as the case may require for managing, investing and disposing of the estate and effects in the hands of the guardian.

Removal, resignation and new appointment.

SEC. 37. When any guardian appointed either by the testator or by the probate court shall become insane, or otherwise incapable of discharging his trust, or evidently unsuitable therefor, or shall have wasted or mismanaged the estate, the probate court, after notice to the guardian, may remove him; and every guardian may, upon request, be allowed to resign his trust when it shall appear to the court proper to allow the same; and upon every such resignation or removal, and upon the death of any guardian, the probate court may appoint another in his place.

Marriage or returning sanity terminates guardianship.

SEC. 38. The marriage of any person who is under guardianship as a minor shall terminate such guardianship, and the guardian of any insane person may be discharged by the probate court when it shall appear, on the application of the ward or otherwise, that such guardianship is no longer necessary.

New bond; discharge of sureties.

SEC. 39. The probate court may require a new bond to be given by any guardian whenever it shall deem it necessary, and may discharge the existing sureties from further liability, after due notice given as such court may direct, when it shall appear that no injury can result therefrom to those interested in the estate.

Bond preserved; action thereon

SEC. 40. Every bond given by a guardian shall be filed and preserved in the office of the clerk of the probate court of the county, and in case of the breach of any of the conditions thereof, may be prosecuted in the name of the ward for the use and benefit of such ward or of any person interested in the estate.

Limitation of action on bond.

SEC. 41. No action shall be maintained against the sureties in any bond given by a guardian unless it be commenced within three years from the time when the guardian shall have been discharged; *provided*, that if at the time of such discharge the person entitled to bring such action shall be under any legal disability to sue, the action may be commenced at any time within three years after such disability be removed.

Charges of wrong-doing, proceeding thereon.

SEC. 42. Upon complaint made to the probate judge by a guardian, or by the ward, or by any creditor, or by any other person interested in the estate, or by any person having any prospective interest therein, as heir or otherwise, against any one suspected of having concealed, embezzled or conveyed away any of the money, goods or effects, or any instrument in writing belonging to the ward, the judge may cite and examine such suspected person, and proceed with him as to such charge in the same manner as provided with respect to persons suspected of concealing or embezzling the effects of a deceased testator or intestate.

Guardian of non-residents, appointment of.

SEC. 43. When any minor, or other person liable to be put under guardianship according to the provisions of this act, shall reside without the Territory, and shall leave any estate therein, any friend of such person, or any one interested in his estate in expectancy or otherwise, may apply to the probate judge of any county in which there may be any estate of such absent person, and after notice given to all interested in such manner as the judge shall order, by publication or otherwise; and after a full hearing and examination by the court, if it shall appear proper, the court may appoint a guardian for such absent person.

Powers and duties of guardians of non-residents.

SEC. 44. Every guardian appointed under the provisions of the preceding section shall have the same powers and perform the same duties with respect to any estate of the ward that shall be found within the Territory, and also with respect to the person of the ward, if he shall come to reside therein, as are prescribed with respect to any other guardian appointed under this act.

Bond, inventory, account of such guardians.

SEC. 45. Every such guardian shall give bond to the ward in the manner and with the like condition as hereinbefore provided with respect to other guardians, excepting that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian shall be confined to such estate and such effects as shall come to his hands in this Territory.

The first appointed to control.

SEC. 46. The guardianship which shall be first lawfully granted of any person residing without this Territory shall extend to all the estate of the ward within the same, and shall exclue the jurisdiction of the probate court of every other county.

Sec. 47. Every guardian shall be allowed the amount of his reasonable expenses incurred in the execution of his trust, and he shall also have such compensation for his services as the courts in which his accounts are settled shall deem to be just and reasonable.

Expenses and compensation allowed.

Sec. 48. The court, in its discretion, whenever the same shall appear necessary, may appoint more than one guardian of any person subject to guardianship, who shall give bond and be governed and liable in all respects as is provided respecting a sole guardian.

May appoint more than one guardian.

Sec. 49. When an account is rendered by two or more joint guardians, the court may, in its discretion, allow the same upon the oath of any of them.

Joint account verified by any one of guardians.

Sec. 50. All sales of real estate of minor heirs made for the benefit of said minor heirs, in accordance with the provisions of this act, shall be for cash, or for part cash and part deferred payments, not to exceed three years, bearing date from the date of sale, as in the discretion of the court may be most beneficial to said minor heirs. Guardians making the sales aforesaid shall demand and receive from the purchasers bond and mortgage on the real estate so sold, with such additional security as the court may deem necessary and sufficient to secure the faithful payment of the deferred payments and the interest thereon.

Terms of sale of real estate.

Security of payment.

Sec. 51. When the guardian and ward are both nonresidents, and the ward is entitled to property in this Territory which may be removed to a State or some other Territory without conflict with any restriction or limitation thereon, or imparing the right of the ward thereto, such property may be removed to the State or Territory of the residence of the ward upon the application of the guardian to the probate court of the county in which the estate of the ward, or the principal part thereof, may be.

Removal of non resident ward's property.

Sec. 52. The guardian shall produce a transcript from the records of a court of competent jurisdiction, certified according to the laws of this Territory, showing that he has been appointed guardian of the ward in the State or Territory in which he and the ward reside, and has qualified as such according to the laws thereof, and given bond with sureties for the performance of his trust; and must also give thirty days' notice to the resident executor, administrator or guardian, if there be such, of the intended application thereupon. Thereupon, if good cause be not shown to the contrary, the court shall make an order granting such guardian leave to remove the property of his ward to the State or place

Proceedings on removal.

of his residence, which shall be an authority for him to sue for and receive the same in his own name for the use and benefit of his ward.

Discharge of person in possession.

SEC. 53. Such order shall be a discharge of the executor, administrator, guardian or other person in whose possession such property may be at the time the order is made.

Letters, bonds, etc., must be recorded; where.

SEC. 54. All letters of guardianship issued, and all guardians' bonds executed under the provisions of this act, with the affidavits and certificates thereon, shall be forthwith recorded by the clerk of the probate court having jurisdiction of the persons and estates of said wards respectively in a book kept by him in his office for that purpose, and said records and duly certified copies thereof shall have the same force and effect as the original thereof would have.

Power of judge in chambers.

Probate practice act to apply.

SEC. 55. All matters which under the provisions of this act may be performed by the probate judge may be performed by him at chambers, or as the act of the probate court, when holding such court. The provisions of the act in relation to the estate of deceased persons, so far as they relate to the practice in the probate court or the district court, shall also apply to proceedings under this act where they do not conflict with any of the provisions of the same.

Jurisdiction of district court not affected.

SEC. 56. Nothing in this act shall be so construed as to affect the jurisdiction of the district court over the subject-matter therein contained.

APPROVED, *January* 12, 1875.

AN ACT

CONCERNING CRIMES AND PUNISHMENTS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

CHAPTER I.

SECTION 1. Essence of crime.
2. Intention, how manifested.
3. Sound mind, definition of.
4. Infants incapable.
5. Counselling idiots and other incapables, effect of.
6. Married woman under coercion.
7. Drunkenness no excuse; exception.
8. Misfortune.
9. Committed under duress.

Act and intention.

SECTION 1. In every crime or public offense there must be union, or joint operation of act and intention, or criminal negligence.

Intention, how manifested.

SEC. 2. Intention is manifested by the circumstances connected with the perpetration of the offense and the sound mind and discretion of the person accused.

Sound mind: definition of

SEC. 3. A person shall be considered of sound mind who is neither an idiot or lunatic or affected with insanity, and who hath arrived at the age of fourteen years, or before that age, if such person know the distinction between good and evil.

Infants incapable.

SEC. 4. An infant under the age of fourteen years shall be deemed incapable of knowing the distinction between good and evil, unless the contrary be clearly shown.

Counseling idiots and other incapables; effect of.

SEC. 5. Any person counseling, advising or encouraging an infant under the age of fourteen years, or lunatic or idiot to commit any offense shall be prosecuted for such offense where committed as principal, and if found guilty, shall suffer the same punishment that would have been inflicted on such person counseling, advising or encouraging, as aforesaid, had he, she or they committed the offense directly, without the intervention of such idiot, lunatic or infant.

Married woman under coercion.

SEC. 6. A married woman, acting under the threats, command or coercion of her husband, shall not be found guilty of any crime not punishable with death; *provided*, it appear, from all the facts and circumstances of the case, that violent threats, commands or coercion were used; and in such case the husband shall be prosecuted as principal, and receive the same punishment which would otherwise have been inflicted on the wife, if she had been found guilty.

Drunkenness no excuse; exception.

SEC. 7. Drunkenness shall not be an excuse for any crime, unless such drunkenness be occasioned by the fraud, contrivance or force of some other person or persons for the purpose of causing the perpetration of an offense; in which case the person or persons so causing said drunkenness for such malignant purpose shall be considered principal or principals, and suffer the same punishment as would have been inflicted on the other person or persons committing the offense if he, she or they had been possessed of sound reason and discretion.

Misfortune.

SEC. 8. All acts committed by misfortune or accident shall not be deemed criminal where it satisfactorily appears that there was no evil design or intention or culpable negligence.

Committed under duress.

SEC. 9. A person committing a crime not punishable with death under threats or menaces, which sufficiently show that his or her life was in danger, or that he or she had reasonable cause to believe, and did believe, that his or her life was in danger, shall not be found guilty; and such threats or menaces being proved and established, the person or persons compelling by such threats or menaces the commission of the offense shall be considered as principal or principals, and suffer the same punishment as if he or she had perpetrated the offense.

CHAPTER II.

Accessory.

SECTION 10. Accessory, who is.
11. Accessory after the fact.

SEC. 10. An accessory is he or she who stands by and aids, abets or assists; or who, not being present, aiding, abetting or assisting, hath advised and encouraged the perpetration of the crime. He or she who thus aids, abets or assists, advises or encourages, shall be deemed and considered as principal, and punished accordingly. **Accessory.**

SEC. 11. An accessory after the fact is a person who, after full knowledge that a crime has been committed, conceals it from the magistrate, or harbors and protects the person charged with or found guilty of crime. Any person found guilty of being an accessory after the fact shall be imprisoned for any term not exceeding two years, and fined in any sum not exceeding five thousand dollars, to be regulated by the circumstances of the case and the enormity of the crime. **Accessory after the fact.**

CHAPTER III.

Witnesses.

SECTION 12. Injured and accused parties may be witnesses.
13. Testimony of accomplices.
14. Affirmation.

SEC. 12. The party or parties injured shall in all cases be competent witnesses, and the party accused and prosecuted in any criminal proceeding or for any crime shall be a competent witness or witnesses on his or her own behalf; but no criminal shall be compelled to testify against him or herself in any case. The credibility of all such witnesses shall be left to the jury as in other caəss. **Injured and accused party may be witnesses.**

SEC. 13. In all cases where two or more persons are jointly or otherwise concerned in the commission of crime or misdemeanor, either of such persons may be sworn as witnesses against another in relation to such crime or misdemeanor; but the testimony given by such witnesses shall in no instance be used against himself in **Testimony of accomplices.**

any criminal prosecution; and any person may be compelled to testify as provided in this section, except a party accused shall not be compelled to testify against his or herself.

Affirmation SEC. 14. The solemn affirmation of witnesses shall be deemed sufficient. A false or corrupt affirmation shall subject the witness to all the penalties and punishments provided for those who commit wilful and corrupt perjury.

CHAPTER IV.

Offenses against the Persons of Individuals.

SECTION 15. Murder.
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17. Implied malice; degrees of murder; jury to determine the degree; punishment.
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51. Kidnapping, punishment for.

SECTION 52. Kidnapping a negro or Indian.
53. Forcing a woman to marry.
54. Abduction of children; poisoning water.
55. Extortion.

SEC. 15. Murder is the unlawful killing of a human being, with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned. Murder.

SEC. 16. Express malice is that deliberate intention unlawfully to take away the life of a fellow creature which is manifested by external circumstances capable of proof. Express malice.

SEC. 17. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart. Implied malice. All murder which shall be perpetrated by means of poison, or lying in wait, torture, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration, or attempt to perpetrate, any arson, rape, robbery, or burglary, shall be deemed murder of the first degree; and all other kinds of murder shall be deemed murder of the second degree; Degrees of murder. and the jury before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, designate by their verdict whether it be murder of the first or second degree; but if such person shall be convicted on confession in open court, the court shall proceed, by examination of witnesses, to determine the degree of the crime, and give sentence accordingly. Jury to determine the degree. Every person convicted of murder of the first degree shall suffer death; and every person convicted of murder in the second degree shall suffer imprisonment in the Territorial prison for a term not less than ten years, and which may be extended to life. Punishment.

SEC. 18. Manslaughter is the unlawful killing of a human being without malice, express or implied, and without any mixture of deliberation. It must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible; or involuntary, in the commission of an unlawful act, or a lawful act without due caution or circumspection. Manslaughter.

SEC. 19. In cases of voluntary manslaughter there must be a serious and highly provoking injury inflicted upon the person killing sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing. Voluntary manslaughter.

When manslaughter punished as murder.

Sec. 20. The killing must be the result of that sudden, violent impulse of passion supposed to be irresistible; for, if there should appear to have been an interval between the assault or provocation given and the killing sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge and punished as murder.

Involuntary manslaughter.

Sec. 21. Involuntary manslaughter shall consist in the killing of a human being, without any intent to do so, in the commission of an unlawful act, or a lawful act which probably might produce such a consequence in an unlawful manner; *provided*, that when such involuntary killing shall happen in the commission of an unlawful act, which in its consequences naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offense shall be deemed and adjudged to be murder.

When murder.

Punishment.

Sec. 22. Every person convicted of the crime of manslaughter shall be punished by imprisonment in the Territorial prison for a term not exceeding ten years.

Death must be within a year and a day.

Sec. 23. In order to make the killing either murder or manslaughter it is requisite that the party die within a year and a day after the stroke received or the cause of death administered, in the computation of which the whole of the day on which the act was done shall be reckoned the first.

Place of trial; jurisdiction.

Sec. 24. If the injury be inflicted in one county, and the party die within another county, or without the Territory, the accused shall be tried in the county where the act was done or the cause of death administered. If the party killing shall be in one county, and the party killed be in another county, at the time the cause of death shall be administered, the accused may be tried in either county.

Justifiable homicide.

Sec. 25. Justifiable homicide is the killing of a human being in necessary self-defense or in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against any person or persons who manifestly intend and endeavor, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of assaulting or offering personal violence to any person, dwelling or being therein.

Bare fear insufficient.

Sec. 26. A bare fear of any of these offences, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing.

When sufficient.

It must appear that the circumstances were sufficient to excite the fears of a reasonable person, and that the party killing really acted under the influence of these fears, and not in a spirit of revenge.

SEC. 27. If a person kill another in self-defense, it must appear that the danger was so urgent and pressing that, in order to save his own life or prevent his receiving great bodily harm, the killing of the other was absolutely necessary; and it must appear also that the person killed was the assailant, or that the slayer had really and in good faith endeavored to decline any further struggle before the fatal blow was given.

Killing in self-defense

SEC. 28. If an officer in the execution of his office in a criminal case, having legal process, be resisted and assaulted, he shall be justified if he kill the assailant. If an officer or private person attempt to take a person charged with felony, and he or they be resisted in the endeavor to take the person accused, and to prevent the escape of the accused by reason of such resistance he or she be killed, the officer or private person so killing shall be justified; *provided*, that such officer or private person previous to such killing shall have used all reasonable efforts to take the accused without success, and that, from all probability, there was no prospect of being able to prevent injury from such resistance, and the consequent escape of such person.

Officer when justifiable in killing.

SEC. 29. Justifiable homicide may also consist in unavoidable necessity, without any will or desire, and without any inadvertence or negligence in the party killing. An officer who in the execution of public justice puts a person to death in virtue of a judgment of a competent court of justice, shall be justified. The officer must, however, in the performance of his duty, proceed according to the sentence and the law of the land.

Justifiable homicide.

SEC. 30. Excusable homicide, by misadventure, is when a person is doing a lawful act without any intention of killing, yet unfortunately kills another: as where a man is at work with an axe, and the head flies off and kills a bystander; or where a parent is moderately correcting his child, or a master his servant or scholar, or an officer punishing a criminal, and happens to occasion death, it is only a misadventure, for the act of correction was lawful; but if a parent or master exceed the bounds of moderation, or the officer the sentence under which he acts either in the manner, the instrument or quantity of punishment, and death ensue, it will be manslaughter or murder according to the circumstances of the case.

Excusable homicide, by misadventure.

SEC. 31. All other instances which stand upon the same footing of reason and justice as those enumerated shall be considered justifiable or excusable homicide.

Other instances.

When acquitted.

Sec. 32. The homicide appearing to be justifiable or excusable, the person indicted shall, upon his trial, be fully acquitted and discharged.

Burden of proof; mitigating circumstances

Sec. 33. The killing being proved, the burden of proving circumstances or mitigation, or that justify or excuse the homicide, will devolve on the accused, unless the proof on the part of the prosecution sufficiently manifests that the crime committed only amounts to manslaughter, or that the accused was justified or excused in committing the homicide.

Woman concealing death of bastard child.

Punishment.

Sec. 34. If any woman shall endeavor privately, either by herself or the procurement of others, to conceal the death of any issue of her body, male or female, which if born alive would be a bastard, so that it may not come to light, whether it shall have been murdered or not, every such mother, being convicted thereof, shall suffer imprisonment in the Territorial prison for a term not exceeding one year; *provided, however*, that nothing herein contained shall be so construed as to prevent such mother from being indicted and punished for the murder of such bastard child.

Dueling where homicide occurs murder

Sec. 35. If any person shall, by previous appointment or agreement, fight a duel with a rifle, shot-gun, pistol, bowie knife, dirk, small sword, back sword, or any other dangerous weapon, and in so doing shall kill his antagonist or any other person or persons, or shall inflict such wound as that the party or parties injured shall die thereof within one year thereafter, every such offender shall be deemed guilty of murder in the first degree, and upon conviction thereof shall be punished accordingly.

Dueling; persons concerned disfranchised.

Sec. 36. Any person who shall engage in a duel with any deadly weapon, although no homicide ensue, or shall challenge another to fight such duel, or shall send or deliver any verbal or written message, purporting or intending to be such challenge, although no duel ensue, shall be punished by imprisonment in the Territorial prison not less than two nor more than ten years, and shall be incapable of voting or holding any office of trust or profit under the laws of this Territory.

Persons implicated in dueling to give evidence.

Sec. 37. Any and every person who shall be present at the time of fighting any duel with deadly weapons, either as second, aid, surgeon or spectator, or who shall advise or give assistance to such duel, shall be a competent witness against any person offending against any of the provisions of this act, and may be compelled to appear and give evidence before any justice of the peace, grand jury or court, in the same manner as other witnesses; but the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying.

Posting and abuse of another for not fighting.

SEC. 38. If any person shall post another, or, in writing, or print, or orally, shall use any reproachful or contemptuous language to or concerning another for not fighting a duel, or for not sending or accepting a challenge, he shall be imprisoned in the Territorial prison for a term not less than six months nor more than one year, and fined in any sum not less than five hundred nor more than one thousand dollars.

Prize fighting.

When death ensues, murder.

SEC. 39. If any person, with or without deadly weapons, upon previous concert and agreement, fight one with another, upon conviction thereof, they, or either or any of them, shall be punished by imprisonment in the Territorial prison for a term not less than two years nor more than five years. Should death ensue to any person in such fight, or should any person die from any injury received in such fight within one year and one day, the person or persons causing such death shall be deemed guilty of murder, and shall be punished accordingly.

Drawing deadly weapons; fines how disposed of, duties of officers, etc.

SEC. 40. That any person in this Territory having, carrying or procuring from another person any dirk, dirk knife, sword cane, pistol, gun or other deadly weapon, who shall in the presence of two or more persons draw or exhibit any of said deadly weapons in a rude, angry and threatening manner, not in necessary self-defense, or who shall in any manner unlawfully use the same in any fight or quarrel, the person or persons so offending, upon conviction thereof in any competent court in any county in this Territory, shall be punished by a fine in any sum not exceeding one thousand dollars, or by imprisonment in the county jail, not exceeding six months, or by both such fine and imprisonment, together with the costs of prosecution, which said costs shall in all cases be computed and collected in the same manner as costs in civil cases. All fines and forfeitures arising under the provisions of this act shall be paid into the county treasury of the county wherein such offense was committed; *provided*, nevertheless, that no sheriff, deputy sheriff, constable, marshal or other peace officer shall be held to answer, under the provisions of this act, for drawing or exhibiting any of the weapons hereinbefore mentioned while in the lawful discharge of his or their duties. It shall be the duty of all military, civil and peace officers in this Territory to be vigilant in carrying the provisions of this act into full force and effect.

Assaulting and intimidation. SEC. 41. If any person shall assault and beat another with a cowhide, stick, or whip, having at the time in his possession a pistol or other deadly weapon, with intent to intimidate and prevent the person assaulted from defending himself, such person shall, on conviction thereof, be imprisoned in the Territorial prison not less than one nor more than four years.

Administering poison. SEC. 42. Every person who shall wilfully and maliciously administer, or cause to be administered to or taken by any person, any poison or other noxious or destructive substance or liquid with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than ten years, and which may extend to life; and every person who shall administer or cause to be administered or taken any medicinal substance, or shall use or cause to be used any instruments whatever, with the intention to procure the miscarriage of any woman then being with child, and shall be thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than two years nor more than five years; *provided*, that no physician shall be affected by the last clause of this section, who, in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life.

Procuring abortion.

Mayhem. SEC. 43. Mayhem consists in unlawfully depriving a human being of a member of his or her body or disfiguring or rendering it useless. If any person shall cut out or disable the tongue, put out an eye, slit the nose, ear or lip, or disable any limb or member of another, or shall voluntary or of purpose put out an eye or eyes, every such person shall be guilty of mayhem. The crime of mayhem shall be punishable by imprisonment in the Territorial prison for a term not exceeding fourteen years.

Rape. SEC. 44. Rape is the carnal knowledge of a female forcibly and against her will, and a person duly convicted thereof shall be punished by imprisonment in the Territorial prison for a term not less than five years, and which may extend to life; and any person of the age of fourteen years and upwards who shall have carnal knowledge of any female child under the age of twelve years, either with or without her consent, shall be adjudged guilty of the crime of rape and be punished as before provided.

Crime against nature. SEC. 45. The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the Territorial prison for a term not less than five years, and which may extend to life.

Assault.

SEC. 46. An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another; and every person convicted thereof shall be fined in any sum not less than twenty dollars nor more than one hundred dollars, or by imprisonment in the county jail, not exceeding six months, or by both such fine and imprisonment, together with the costs of suit.

Assault with intent to commit murder, etc.

SEC. 47. An assault with intent to commit murder, rape, the infamous crime against nature, mayhem, robbery or grand larceny shall subject the offender to imprisonment in the Territorial prison for a term not less than one year nor more than fourteen years. An assault with a deadly weapon, instrument or other thing with an intent to inflict upon the person of another a bodily injury where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall subject the offender to imprisonment in the Territorial prison not less than one year nor exceeding two years, or to a fine not less than one thousand nor exceeding five thousand dollars, or to both such fine and imprisonment.

Assault with deadly weapon, etc

Assault and battery.

SEC. 48. Assault and battery is the unlawful beating of another, and a person duly convicted thereof shall be punished by fine in any sum not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment, together with costs of suit.

False imprisonment

SEC. 49. False imprisonment is an unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority. Any person convicted of false imprisonment shall pay all damages sustained by the person so imprisoned, and be fined in a sum not exceeding five thousand dollars, or imprisoned in the Territorial prison for a term not exceeding one year.

Kidnapping

SEC. 50. Kidnapping is the forcible abduction or stealing away of a man, woman or child from his or her own home, and sending or taking him or her from said home.

Kidnapping, punishment for.

SEC. 51. Every person who shall forcibly steal, take or arrest any man, woman or child, whether white, black or colored, or any Indian in this Territory, and carry him or her into another county, State or Territory, or who shall forcibly take or arrest any person or persons whatsoever, with a design to take him or her out of this Territory, without having established a claim according to the laws of the United States, shall, upon conviction, be deemed guilty of kidnapping, and be punished by imprisonment in the Territorial prison for any term not less than one nor more than ten years for each person kidnapped or attempted to be kidnapped.

Kidnapping a negro or Indian. SEC. 52. Every person who shall hire, persuade, entice, decoy or seduce, by false promises, misrepresentations and the like, any negro, mulatto or colored person, or Indian, to go out of this Territory, or to be taken or removed therefrom, for the purpose and with the intent to sell such negro, mulàtto, colored person or Indian into slavery or involuntary servitude, or otherwise to employ him or her for his own use or to the use of another, without the free will and consent of such negro, mulatto or colored person, or Indian, shall be deemed to have committed the crime of kidnapping, and, upon conviction thereof, shall be imprisoned in the Territorial prison for any term not less than one nor more than ten years.

Forcing woman to marry. SEC. 53. Every person who shall take any woman unlawfully, against her will, and by force, menace or duress, compel her to marry him or to marry any other person, or to be defiled, and shall be thereof convicted, shall be punished by imprisonment in the Territorial prison for a term not less than two nor more than ten years, and the record of such conviction shall operate as a divorce to the party so married.

Abduction of children. SEC. 54. Every person who shall maliciously, forcibly or fraudulently lead, take or carry away, or decoy or entice away, any child under the age of ten years, with intent to detain and conceal such child from its parent, guardian or other person having the lawful charge of such child, shall, upon conviction thereof, be punished by imprisonment in the Territorial prison for a term not exceeding ten years, or by a fine not exceeding five thousand dollars, or by both such fine and imprisonment.

Poisoning water. Every person who shall wilfully poison any spring, well or reservoir of water, shall, upon conviction thereof, be punished by imprisonment in the Territorial prison for a term not less than one nor more than ten years.

Extortion. SEC. 55. If any person, either verbally or by any written or printed communication, shall maliciously threaten any injury to the person or property of another, with intent thereby to extort money or any pecuniary advantage whatever, or to compel the person so threatened to do any act against his or her will, he shall, on conviction thereof, be punished by imprisonment, not more than one year nor less than six months, or by fine not exceeding five hundred dollars nor less than one hundred dollars, or by both such fine and imprisonment.

CHAPTER V.

Offenses against Habitations and Other Buildings.

SECTION 56. Arson, first and second degree.
59. Burglary.

SEC. 56. Every person who shall wilfully and maliciously burn or cause to be burned, in the night time, any dwelling-house in which there shall be at the time some human being, shall be deemed guilty of arson in the first degree, and, upon conviction thereof, shall be punished by imprisonment not less than two years, and which may extend to life, in the Territorial prison. Arson—first degree. Punishment.

SEC. 57. Every person who shall wilfully and maliciously burn or cause to be burned any dwelling-house or building owned by himself or the property of another, in the day time or in the night time; or cause to be burned any kitchen, office, shop, barn, stable, storehouse, warehouse or other building; or stacks or stocks of hay or grain or standing crops, the property of another person or corporation; or any church, meeting-house, school-house, state-house, court-house or any other public building; or any ship, boat or other water craft; or any bridge of the value of fifty dollars or more over or across any of the water-courses in this Territory, such person so offending shall be deemed guilty of arson in the second degree, and, upon conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one year nor more than ten years; and should the life or lives of any person or persons be lost by such burning, as mentioned in this and the preceding section, such offender shall be deemed guilty of murder, and shall be punished accordingly. Arson—second degree. Punishment. When murder.

SEC. 58. Every person who shall wilfully burn or cause to be burned any building or any goods, wares, merchandise or other chattels which shall be at the time insured against loss or damage by fire, with intent to injure or defraud such insurer, whether the same be the Arson to recover insurance.

property of such person or any other, shall, upon conviction, be adjudged guilty of arson in the second degree, and punished accordingly.

Burglary. Sec. 59. Every person who shall, in the night time, forcibly break and enter, or without force (the doors and windows being open) enter into any dwelling-house or any other house whatever, or tent, with intent to commit murder, robbery, rape, mayhem, larceny or other felony, shall be deemed guilty of burglary, and, upon conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one nor more than ten years.

Punishment.

CHAPTER VI.

Offenses against Property.

Section 60. Robbery; grand and petit larceny; dog-stealing.
64. What constitutes personal goods; recovering stolen goods, etc
65. Stolen property to be restored to lawful owner.
67. Property stolen out of the Territory.
68. Marking or branding stock.
69. Embezzlement by public officers.
70. Officer refusing to pay over public funds.
71. Embezzlement; destroying deeds, etc.
73. Removing landmarks.
74. Embezzlement by clerks, etc.
75. Conversion of goods by bailee.
76. Embezzlement by lodgers.

Robbery. Sec. 60. Robbery is the felonious and violent taking of money, goods or other valuable thing from the person of another by force or intimidation. Every person guilty of robbery shall be punished by imprisonment in the Territorial prison for a term not less than five years, and which may be extended to life.

Grand larceny. Sec. 61. Every person who shall feloniously steal, take and carry away the personal goods or property of another of the value of sixty dollars or more, or shall feloniously steal, take, drive or carry away any head of live stock, the property of another, shall be deemed guilty of grand larceny, and, upon conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one year nor more than fourteen years, or by a fine not exceeding one thousand dollars.

Petit larceny. Sec. 62. Every person who shall feloniously steal, take and carry, lead or drive away the personal goods or property of another under the value of sixty dollars shall be deemed guilty of petit larceny, and, upon conviction thereof, shall be punished by fine in any sum not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment, together with costs of suit.

Dog-stealing.

Punishment.

Imprisonment one day for every $2.00 of fine.

SEC. 63. That every person who shall feloniously steal, take and carry, lead or drive away any dog, either of the male or female kind, belonging to another, shall be deemed guilty of petit larceny, and, upon conviction thereof, shall be punished by imprisonment in the county jail not more than six months, or by a fine not exceeding one hundred dollars, or by both such fine and imprisonment. In any judgment rendered for a fine only, the judgment shall provide that, unless the same be paid, the defendant shall be imprisoned in the county jail at the rate of one day for every two dollars of the fine.

What constitutes personal property.

SEC. 64. Bonds, promissory notes, bank notes, bills of exchange, or other bills, orders, drafts, checks, receipts or certificates, or warrants for or concerning money, goods or property, due or to become due, or to be delivered; or any public security issued by the United States or by this Territory, and any deed or writing containing a conveyance of land or valuable contract, in force, or any release or defeasance, or any other instrument whatever, shall be considered personal goods, of which larceny may be committed, and the money due thereon or secured thereby and remaining unsatisfied, or which in any event or contingency might be collected thereon, or the value of the property transferred or affected thereby, as the case may be, shall be deemed the value of the article stolen.

Receiving stolen goods.

SEC. 65. Every person who for his own gain or to prevent the owner from again possessing his property shall buy or receive stolen goods, or anything the stealing of which is declared to be larceny, or property obtained by robbery, burglary or embezzlement, knowing the same so to have been obtained, shall, upon conviction, be punished by imprisonment in the Territorial prison for a term not exceeding five years, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment; and every such person may be tried, convicted and punished as well before as after the trial of the principal. No person convicted of the offense specified in this section shall be condemned to imprisonment in the Territorial prison unless the value of the thing bought or received shall amount to fifty dollars, but the same shall be punished as provided in cases of petit larceny.

Stolen property to be restored to the owner.

SEC. 66. All property obtained by larceny, robbery, burglary or embezzlement shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his right to such property. Such owner may maintain his action, not only against the felon, but against any person in whose possession he may find the property.

Property stolen out of Territory, but brought into this Territory.

SEC. 67. Every person bringing any goods or property into this Territory, taken by himself or which he knew was taken by another in another Territory or State by robbery, burglary, embezzlement or larceny, shall, upon reasonable cause being shown to a magistrate to induce him to believe that the accused has brought such goods or property into this Territory taken in either of the ways aforesaid in another Territory or State, be committed to the county jail to await a requisition from the governor of the Territory or State whence such goods or property was brought as aforesaid into this Territory; *provided*, that such person shall not be detained, in such custody longer than a period of twelve weeks.

Marking or branding stock.

SEC. 68. Every person who shall mark or brand, alter or deface the mark or brand of any horse, mare, colt, jack, jennet, mule, or any one or more head of neat cattle or sheep, goat, hog, shoat or pig, not his or her own property, but belonging to some other person, or cause the same to be done, with intent thereby to steal the same, or to prevent identification thereof by the true owner, shall, on conviction thereof, be punished by imprisonment in the Territorial prison for a term not less than six months nor more than five years.

Embezzlement by public officers.

SEC. 69. Every servant, officer, or person employed in any department, station or office of the government of this Territory, or of any county of this Territory, or in any office of a corporate body, who shall embezzle, steal, secrete or fraudulently take and carry away any money, goods, chattels, effects, books, or book of record or of account, bond or bonds, promissory note or notes, bank bill or notes, or any other writing or security for the payment of money or property, of whatever description it may be, being the property of said Territory, county or corporate body, shall, on conviction thereof, be punished by imprisonment in the Territorial prison for a period of time not less than one year nor more than ten years.

Officer refusing to pay over public funds

SEC. 70. If any officer or person who now is or hereafter may be entrusted by law to collect, disburse or receive, or safely keep any money or moneys, revenue or revenues belonging to this Territory to the school fund of this Territory, to the school fund of any county, or township of any county in this Territory, to any canal, turnpike or railroad fund of this Territory, or any county thereof, or to any fund for the improvement of any public road or roads, river, creek or other water-course bordering on or within this Territory, or to any other fund now being or hereafter to be established by law for public purposes, and who shall fail or refuse to pay over all moneys, warrants, bills, notes and orders which any such officer or person shall receive for disbursement and has not disbursed, or shall collect, or shall receive for safe keeping, belonging to this Territory, to any county of this Territory, or to any such fund as aforesaid, when such officer or person shall thereto be required by law, and demand duly made by the successor or successors of such officer or person in office, or by the officer or person to whom such money, warrant, bills, notes or orders ought by law to be paid over, or his or their attorney or agent, duly authorized in writing, signed and acknowledged, if such demand be practicable, every such officer or person shall, on conviction therefor, be punished by imprisonment in the Territorial prison for a term not less than one year nor more than two years; *provided*, that no person shall be imprisoned in the Territorial prison under this section unless the money not paid over shall amount to more than one hundred dollars, or if it appear that such failure or refusal shall be occasioned by unavoidable accident or loss. Every person convicted under the provisions of this section shall forever thereafter be disqualified from holding any office of honor, trust or profit in this Territory.

Conversion, use, etc., of public moneys embezzlement.

SEC. 71. That if any officer of the Territory, or of any county, city or town in this Territory, charged with the safe-keeping, transfer or disbursement of public money, shall convert to his own use in any way whatever, or shall use by the way of investment in any kind of property or merchandise, or shall loan, with or without interest, any portion of the public moneys, bonds, or other evidences of indebtedness of the Territory intrusted to him for safe keeping, transfer or disbursement, or any other purpose, every such act shall be deemed and adjudged to be an embezzlement of so much of said moneys as shall be thus taken, converted, invested, used or loaned, which is hereby declared to be felony; and the neglect or refusal to pay over on demand any public moneys in his hands upon the presentation of a draft or order or warrant drawn upon him by the proper officer, or any officer authorized by law, and signed by such officer, or to transfer or disburse any such moneys promptly according to law, on the legal requirement of any officer authorized to make such requirement, shall be *prima facie* evidence of such conversion to his own use of the public moneys as may be in his hands. All persons advising or knowingly or wilfully participating in such embezzlement, upon being convicted thereof before any court of this Territory of competent jurisdiction, shall, for every such offense, forfeit and pay to the Territory a fine equal to the amount embezzled, and shall suffer imprisonment in the Territorial prison for a term not less than one year nor more than five years.

Destroying papers, writings, deeds, etc.

SEC. 72. Every person who shall fraudulently or maliciously tear, burn, efface, cut, or in any way destroy any debt, lease, bond, will, or any other writing sealed, or any bank bill or note, check, warrant or certificate for the payment of money or other thing, or the delivery of goods, or any certificate or other public security of this Territory or of the United States, or of any State or Territory, for the payment of money, or any receipt, acquittance, release or defeasance, discharge of any debt, suit or other demand, or any transfer or assurance of money, stock, goods, chattels or other property, or any letter of attorney or other power, or any day book or other book or account, or any agreement or contract whatever, with intent to defraud, prejudice or injure any person or body corporate, shall, upon conviction thereof, be punished by imprisonment in the Territorial prison for a term not less than one year nor more than five years.

Removing monuments destroying landmarks.

SEC. 73. Every person who shall wilfully or maliciously remove any monument of stone, wood or other durable material, erected for designating the corner or other point, or any post or stake fixed or driven in the ground for the purpose of designating a point in the boundary of any lot or tract of land; or alter the marks on any tree, post or other monument made for the purpose of designating any point, course or line in the boundary of any lot or tract of land; or shall cut down or remove any tree upon which any such marks shall be made for such purpose, with the intent to destroy such marks, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by fine not less than one hundred nor more than two thousand dollars, or by imprisonment in the county jail for a term not less than one month nor more than one year.

Embezzlement by clerks, etc.

SEC. 74. If any clerk, apprentice or servant, or other person, whether bound or hired, to whom any money, or goods, or chattels, or other property, shall be entrusted by his master or employer shall withdraw himself from his master or employer, and go away with the money, goods, chattels or other property, or any part thereof, with intent to steal the same and defraud his master or employer thereof, contrary to the confidence and trust in him reposed by his said master or employer; or, being in the service of his said master or employer, shall embezzle the said money, goods, or chattels or property, or any part thereof, or otherwise shall convert the same to his own use with like purpose to steal the same, every person so offending shall be punished in the manner prescribed by law for feloniously stealing property of the value of the articles so taken, embezzled or converted.

Neglect or refusal to pay over money.

SEC. 75. Every attorney at law, agent, collector or other person who shall collect or receive any money or property on any debt, claim or demand due to another person, and, upon demand made by said person to whom such debt, claim or demand is due, shall, for the space of twenty days, refuse or neglect to pay over said money or deliver up said property so received to such person making said demand, shall be deemed guilty of grand or petit larceny according to the amount of the money or value of the property so refused to be delivered over. If any bailee of any money, goods or property shall convert the same to his own use, with intent to steal the same, he shall be deemed guilty of grand or petit larceny according to the amount of the money or value of the goods, chattels or property so converted, in the same manner as if the original taking had been felonious, and, on conviction thereof, shall be punished accordingly.

Conversion of goods by bailee.

Stealing by lodger.

SEC. 76. If any lodger shall take away, with intent to steal, embezzle, or purloin, any bedding, furniture, goods or chattels, which he is to use in or with his lodging, he shall be deemed to be guilty of grand or petit larceny according to the value of the property so taken, and, on conviction, shall be punished accordingly.

CHAPTER VII.

Forgery and Counterfeiting.

SECTION 77. Certain offenses deemed.
78. Counterfeiting coin, possessing or receiving.
80. Counterfeiting stamps, labels, etc.
81. Selling goods having forged stamps.

SECTION 82. Possessing or receiving forged instruments in writing.
83. Possessing or passing fictitious papers.
84. Making or possessing counterfeit die or plates.
85. Proof of charter.
86. Experts to prove.
87. Counterfeiting seals, gold dust, etc.
89. Possessing or receiving counterfeit gold dust, etc.

Forgery.

SEC. 77. Every person who shall falsely make, alter, forge or counterfeit any record or other authentic matter of a public nature or character; letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, power of attorney, any auditor's warrant for the payment of money at the treasury; county order or warrant, or request for the payment of money or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or receipt for money or goods; or any acquittance, release or discharge of any debt, account, suit, action, demand or other thing, real or personal; or any transfer of assurance of money, stock, goods, chattels or other property whatever; or any letter of attorney or other power to receive money or to receive or transfer stock or annuities, or to let, lease, dispose of, alien or convey any goods or chattels, lands or tenements or other estate, real or personal; or any acceptance or indorsement of any bill of exchange, promissory note, draft, order or assignment of any bond, writing obligatory or promissory note for money or other property; or shall counterfeit or forge the seal or handwriting of another, with intent to damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in or belong to this Territory or not; or shall utter, publish, pass, or attempt to pass, as true and genuine any of the above-named false, altered, forged or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged or counterfeited, with intent to prejudice, damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in this Territory or not—every person so offending shall be deemed guilty of forgery, and, upon conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one year nor more than fourteen years.

Counterfeiting gold coin, etc.

SEC. 78. Every person who shall counterfeit any of the species of gold or silver coin now current or that shall hereafter be current in this Territory, or shall pass or give in payment such counterfeit coin; or permit, cause or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeited, shall be deemed guilty of counterfeiting, and, upon conviction therefor, shall be punished by imprisonment in the Territorial prison for a term not less than one year nor more than fourteen years.

Having in possession counterfeit coin.

SEC. 79. Every person who shall have in his possession or receive for any other person any counterfeit gold or silver coin or coins of the species now current or hereafter to be current in this Territory, with intention to utter or pass the same, or permit, cause or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeited, and being thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than one nor more than fourteen years.

Counterfeiting private labels, etc.

SEC. 80. That every person who shall knowingly and wilfully forge or counterfeit, or cause or procure to be forged or counterfeited, upon any goods, wares or merchandise the private stamps or labels of any mechanic or manufacturer, with intent to defraud the purchasers or manufacturers of any goods, wares or merchandise whatsoever, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term not exceeding six months, or by a fine not less than three hundred nor more than six hundred dollars.

Selling goods having forged stamps and labels.

SEC. 81. That any person who shall sell any goods, wares or merchandise having thereon any forged or counterfeit stamps or labels, purporting to be the stamps or labels of any mechanic or manufacturer, knowing the same to be forged or counterfeited, without disclosing the fact to the purchaser, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term not exceeding six months, or by fine not less than three hundred dollars nor more than six hundred dollars.

Possessing or receiving forged instruments.

SEC. 82. Every person who shall have in his possession or shall receive from any other person any forged promissory note or notes, or bank bills, or bills for the payment of money or property, with intention to pass the same or procure the same to be uttered or passed with intent to defraud any person or persons, body politic or corporate, whether such person or persons, body politic or corporate, reside in or belong to this Territory or not, knowing the same to be forged or counterfeited; or shall have and keep in his possession any blank or unfinished note or bank bill made in the form or similitude of any promissory note or bill for the payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up and complete such blank and unfinished note or bill, or to permit, or cause, or procure the same to be filled up and completed, in order to utter or pass the same, or to permit, or cause, or procure the same to be uttered and passed, to defraud any person or persons, body politic or corporate, whether in this Territory or elsewhere, shall, on conviction thereof, be punished by imprisonment in the Territorial prison for a term not less than one year nor more than fourteen years.

Possessing or passing fictitious bills, etc.

SEC. 83. Every person who shall make, pass, utter or publish, with an intention to defraud any other person or persons, body politic or corporate, either in this Territory or elsewhere, or with the like intention shall attempt to pass, utter or publish, or shall have in his possession with the intention to utter, pass or publish, any fictitious bill, note or check, purporting to be the bill, note or check, or other instrument in writing for the payment of money or property, of some bank, corporation, copartnership or individual, where, in fact, there shall be no such bank, copartnership or individual in existence, the said person, knowing the said note, bill, check or instrument in writing for the payment of money or property to be fictitious, shall be deemed guilty of forgery, and, on conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one nor more than fourteen years.

Making or possessing counterfeit die or plates.

SEC. 84. Every person who shall make, or knowingly have in his possession, any die or dies, plate or plates, or other thing whatever, made use of in counterfeiting the coin now made current or hereafter to be made current in this Territory, or in counterfeiting bank notes or bills, upon conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one year nor more than fourteen years; and all such dies, plates, apparatus, paper, metal or machine intended for the purpose aforesaid shall be destroyed.

Proof of charter how made.

SEC. 85. On the trial of any person for forging any bill or note, purporting to be the bill or note of some incorporated company or bank, or for passing, or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it shall not be necessary to prove the incorporation of such bank, or company by the charter or act of incorporation, but the same may be proved by general reputation.

Skilled persons witnesses.

Sec. 86. Persons of skill shall be competent witnesses to prove that such bill or note is forged or counterfeited.

Counterfeiting seals signatures, etc.

Sec. 87. Every person who shall fraudulently forge or counterfeit the seal of this Territory, or the seal of any court or officer by law entitled to have and use a seal, or seal of any corporation, and shall make use of the same, or shall forge or counterfeit the signature of any public officer or seal of any corporation, or shall unlawfully and corruptly and with evil intent affix any of the true seals to any commission, deed, warrant, pardon, certificate, or other writing, or who shall have in his possession or custody any such counterfeit seal, and shall wilfully conceal the same, knowing it be falsely made and counterfeited, and shall thereof be convicted, shall be punished by imprisonment in the Territorial prison for a term not less than one year nor more than fourteen years.

Counterfeiting gold dust, bullion, etc.

Sec. 88. If any person shall counterfeit any kind or species of gold dust, or silver, gold bullion, or bars, lumps, pieces or nuggets of gold or silver, or any description whatever of uncoined gold or silver currently passing in this Territory, or shall alter or put off any kind of uncoined gold or silver mentioned in this section, for the purpose of defrauding any person or persons, body politic or corporate, or shall make any instrument for counterfeiting any kind of uncoined gold or silver as aforesaid, knowing the purpose for which such instrument was made, or shall knowingly have in his possession and secretly keep any instrument for the purpose of counterfeiting any kind of uncoined gold or silver as aforesaid, every such person so offending shall be deemed guilty of counterfeiting, and upon conviction thereof, shall be punished by imprisonment in the Territorial prison for a term of not less than one year nor more than fourteen years.

Possessing or receiving counterfeit gold dust, etc.

Sec. 89. Every person who shall have in his possession or receive for any other person any counterfeit gold dust, silver, gold, bullion or bars, lumps, pieces or nuggets of gold or silver, or any description whatever of uncoined gold or silver currently passing in this Territory or entering in any wise into the circulating medium of this Territory, with the intention to pass, utter or put off the same, or permit, cause or procure the same to be uttered or passed, with the intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term of not less than one year nor more than fourteen years.

CHAPTER VIII.

Crimes and Offenses against Public Justice.

SECTION 90. Perjury and subornation.
91. Conviction by purjury deemed murder.
92. Bribery of judge or members of Legislative assembly.
93. Officers receiving bribe; attempting to bribe officers.
95. Stealing, altering or defacing records.
96. Inhumanity to prisoners.
97. Refusing to deliver records.
98. Personating another; obstructing officers in service of process.
101. Releasing prisoners after conviction or before conviction.
103. Escape; voluntarily permitting it.
104. Aiding escape; releasing prisoner on civil process.
106. Aiding unsuccessful attempt to escape; officer permitting, etc., before conviction.
108. Officer refusing to receive or arrest.
109. Compromising offences; conspiring to commit, etc.
111. Unauthorized action of one for another; embracery.
113. Extortion; purchasing judgments.
115. Selling office.
116. Sending threatening letters.
117. Opening sealed letters of another.

Perjury and subornation.

SEC. 90. Every person having taken a lawful oath or made affirmation in any judicial proceeding or in any other matter where by law an oath or affirmation is required who shall swear or affirm wilfully, corruptly and falsely in a matter material to the issue or point in question, or shall suborn any other person to swear or affirm as aforesaid, shall be deemed guilty of perjury or subornation of perjury, as the case may be, and, upon conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one year nor more than fourteen years.

When conviction of perjury deemed murder.

SEC. 91. Every person who by wilful and corrupt perjury or subornation of perjury shall procure the conviction and execution of any innocent person shall be deemed guilty of murder, and, upon conviction thereof, shall suffer the punishment of death.

Bribery of judge or member of the Legislative Assembly.

SEC. 92. If any person or persons shall, directly or indirectly, give any sum of money or other bribe, present or reward, or any promise, contract, obligation or security for the payment or delivery of any money, present, reward, or any other thing, to obtain or procure the opinion, judgment or decree of any judge or justice of the peace acting within this Territory; or to corrupt, induce or influence such judge or justice of the peace to be more favorable to one side than to the other in any suit, matter or cause pending or to be brought before him or them; or shall, directly or indirectly, give any sum or sums of money, presents or rewards, or any promise, contract, obligation or security for the payment or delivery of any money, present or reward, or any other thing, to obtain, procure or influence any member of the Legislative Assembly, or to incline, induce or influence any such member of the Legislative Assembly to be more favorable to one side than the other, on any question, election, matter or thing pending or to be brought before the legislature, or either house thereof, the person so giving any money, bribe, present or reward, promise, contract, obligation or security, with the intent and for the purpose aforesaid, and the judge, justice of the peace, or member of the Legislative Assembly who shall accept or receive the same, shall be deemed guilty of bribery, and, on conviction, shall be punished by imprisonment in the Territorial prison for a term not less than one year, and shall be disqualified from holding any office of honor, trust or profit in this Territory.

Bribery in general.

SEC. 93. If any person shall, directly or indirectly, give any sum or sums of money, or any other bribe, present or reward, or any promise, contract or security for the payment of any money, present or reward, or any other thing, to any judge, justice of the peace, sheriff, coroner, clerk, constable, jailor, attorney general, district or county attorney, member of the Legislative Assembly, or other officer, ministerial or judicial, or assessor (but such fees as are allowed by law), the person so giving and the officer so receiving any money, bribe, present, reward, promise, contract, obligation or security shall be deemed guilty of bribery, and, on conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one year nor more than ten years, and shall be disqualified from holding any office of honor, trust or profit in this Territory.

Attempt to commit bribery.

SEC. 94. Every person who shall offer or attempt to bribe any member of the Legislative Assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailor, attorney general, district or county attorney, or other ministerial or judicial officer, or assessor, in any of the cases mentioned in the two preceding sections; and every member of the Legislative Assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailor, attorney general, district or county attorney, or other ministerial or judicial officer, or assessor, who shall propose or agree to receive a bribe in any of the cases mentioned in either of the two preceding sections, shall, on conviction, be imprisoned in the Territorial prison for a term not less than one year nor more than five years, and shall be disqualified to hold any office of honor, trust or profit in this Territory.

Stealing, altering or defacing records, documents, etc.

SEC. 95. If any judge, justice of the peace, sheriff, coroner, clerk, recorder, or other public officer, or assessor, or any person whatever, shall steal, embezzle, corrupt, alter, withdraw, falsify or avoid any record, process, charter, gift, grant, conveyance, bond or contract; or shall knowingly and wilfully take off, discharge or conceal any issue, forfeited recognizance or other forfeiture; or shall forge, deface or falsify any document or instrument recorded, or any registered acknowledgment or certificate; or shall alter, deface or falsify any minute document, book, or any proceeding whatever of or belonging to any public office in this Territory, the person so offending, and being thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than one year nor more than ten years, and be fined in any sum not exceeding five thousand dollars.

Inhumanity to prisoners

SEC. 96. Every sheriff or jailor, or person who shall be guilty of wilful inhumanity or oppression to any prisoner under his care or custody shall be fined in any sum not exceeding two thousand dollars, and shall be removed from office.

Refusing to deliver and mutilating records, etc.

SEC. 97. If any officer whose office shall be abolished by law, or who after the expiration of the time for which he may be appointed or elected, or after he shall have resigned, or been legally removed from office, shall wilfully and unlawfully withhold or detain from his successor, or other person entitled thereto by law, the records, papers, documents, or other writings appertaining or belonging to his office, or mutilate or destroy or take away the same, the person so offending shall, on conviction, be punished by imprisonment in the Territorial prison for a term not less than one year nor more than ten years. The provisions of this section shall apply to any person who shall have such records, documents, papers or other writings in his, her or their possession, and shall wilfully mutilate, destroy, withhold or detain the same as aforesaid.

Personating another.

SEC. 98. Every person who shall falsely represent or personate another, and in such assumed character shall marry another, become bail or security for any party in any proceeding, civil or criminal, before any court or officer authorized to take such bail or surety, or confess any judgment, or acknowledge the execution of any conveyance of real estate, or of any other instrument which by law may be recorded, or do any other act in the course of any suit, proceeding or prosecution whereby the person so represented or personated may be made liable in any event to the payment of any debt, damages, costs or sum of money, or his right or interest, may in any manner be affected, shall, upon conviction, be punished by imprisonment in the Territorial prison for a term not less than one year nor exceeding ten years or by fine not exceeding five thousand dollars.

Personating another and receiving money, etc.

SEC. 99. Every person who shall falsely represent or personate another, and in such assumed character shall receive any money or valuable property of any description intended to be delivered to the person so personated, shall, upon conviction, be punished in the same manner and to the same extent as for feloniously stealing the money or property so received.

Obstructing or resisting an officer.

SEC. 100. If any person shall knowingly and wilfully obstruct, resist or oppose any sheriff, deputy sheriff, coroner, constable, marshal, policeman or other officer of this Territory, or other person duly authorized, in serving or attempting to serve any law process or order of any court, judge or justice of the peace, or any other legal process whatever; or shall assault or beat any such officer or person duly authorized in serving or executing or attempting to serve or execute any order or process as aforesaid, or for having served or executed or attempting to serve or execute the same, every person so offending shall be fined in any sum not exceeding five thousand dollars and punished by imprisonment in the Territorial prison for a term not less than one year nor more than five years; *provided*, any officer or person whatever that may or shall assault or beat any individual under color of his commission or authority, without lawful necessity so to do, shall, on conviction, suffer the same punishment.

Officer unlawfully assaulting or beating an individual.

Releasing a convicted prisoner.

SEC. 101. If any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime the punishment of which is death, such person, on conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one year nor more than fourteen years; and if any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime the punishment of which is imprisonment in the Territorial prison, the person so offending, on conviction thereof, shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued.

Releasing a person charged with crime.

SEC. 102. If any person shall set at liberty or rescue any person who, before conviction, stands charged or committed for any capital offense or crime punishable in the Territorial prison, such person so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars and imprisoned in the Territorial prison not less than one year nor exceeding two years; and if the person rescued or set at liberty stands charged, committed or convicted of any misdemeanor, or other offense punishable by fine or imprisonment, or both, the person convicted of such rescue or setting at liberty shall suffer the same punishment that would have been inflicted on the person rescued or set at liberty if he or she had been found guilty.

Escape, voluntarily permitting it.

SEC. 103. If any sheriff, deputy sheriff or jailor, or any person employed by them as a guard, shall fraudulently contrive, procure, aid, connive at, or otherwise voluntarily suffer the escape of any convict in custody, every such person, on conviction, shall be punished by imprisonment in the Territorial prison for a term not less than one year nor for more than ten years, and fined in a sum not exceeding ten thousand dollars.

Aiding escape.

SEC. 104. If any person shall carry to any convict imprisoned or in custody, or into any county jail, or other place where such convict may be confined, any tool, weapon or other aid, with intent to enable such convict to escape such custody or confinement, whether such escape be effected or not, any person so offending, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or imprisoned in the Territorial prison not less than one year nor more than five years.

Rescuing a person in custody.

SEC. 105. If any person or persons shall rescue another in lawful custody on civil process, such person or persons shall, on conviction, be fined in any sum not exceeding one thousand dollars.

Aiding and assisting prisoner to escape.

SEC. 106. If any person shall aid or assist a prisoner lawfully imprisoned or detained in custody for any offense against this Territory, or who shall be lawfully confined by virtue of any civil process, to make his or her escape from imprisonment or custody, though no escape be actually made; or if any person shall convey or cause to be delivered to such prisoner any disguise, instrument or arms proper to facilitate the escape of such prisoner, any person so offending, although no escape or attempt to escape be actually made, shall, on conviction, be punished by fine not exceeding five thousand dollars and imprisonment in the Territorial prison not less than one year nor more than five years.

Voluntarily suffering an escape.

SEC. 107. If any sheriff, coroner, jailor, keeper of a prison, constable or other officer or person whatever having any prisoner in his legal custody before conviction, shall voluntarily suffer or permit such prisoner to escape or go at large, every such officer or person so offending shall, on conviction, be fined in any sum not exceeding five thousand dollars and imprisoned in the Territorial prison not less than one year nor exceeding five years; *provided*, that if such person be in custody charged with murder or other capital offense, then such officer or person suffering or permitting such escape shall be punished by imprisonment in the Territorial prison for any term not less than one year nor more than ten years. A negligent escape of a person charged with a criminal offense, before conviction, from the custody of any of the aforesaid officers, shall be deemed a misdemeanor, and such officer shall be imprisoned in the Territorial prison for a term not less than one year nor more than five years, or shall be fined in a sum not less than one thousand nor exceeding five thousand dollars.

Negligent escape.

Officer refusing to receive or arrest.

SEC. 108. If any sheriff, coroner, keeper of a jail, constable or other officer shall wilfully refuse to receive or arrest any person charged with a criminal offense, such sheriff, coroner, jailor, constable or other officer so offending shall, on conviction, be fined in any sum not less than one thousand nor more than five thousand dollars, and imprisoned in the Territorial prison not exceeding five years.

Compromising or compounding offenses

SEC. 109. Every person having a knowledge of the actual commission of any offense punishable by imprisonment in a county jail, or by fine, or of any misdemeanor or violation of any statute for which any pecuniary or other penalty is or shall be prescribed, who shall take any money, property, gratuity or reward, or any engagement or promise therefor upon any agreement or understanding, express or implied, to compound or conceal such any offense or misdemeanor, or to abstain from any prosecution therefor, or to withhold any evidence thereof, shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail not more than six months; *provided*, that this section shall not apply to those offenses which may lawfully be compromised by leave of the court.

Conspiring to commit an offense, etc.

SEC. 110. If two or more persons shall conspire either to commit any offense, or falsely and maliciously to indict another for any offense, or to procure another to be charged or arrested for any such offense, or falsely to move or maintain any suit, or to cheat or defraud any person of any property by any means which, if executed, would amount to a cheat, or to obtain money or property by false pretences, or to cheat or defraud any person of any property by any means which are in themselves criminal, or to commit any act injurious to public health, to public morals, or to trade or commerce, or for perversion or obstruction of justice or due administration of the laws, they shall, on conviction, be punished by imprisonment in the county jail not more than six months, or by a fine of not more than one thousand dollars; *provided*, that it shall not be necessary to procure conviction under this section to prove any overt act done in pursuance of such conspiracy.

Unauthorized action, one for another.

SEC. 111. If any person shall wilfully take upon himself to exercise or officiate in any office or place of another in this Territory without being lawfully authorized thereto, he shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars.

Embracery: influencing a juror.

SEC. 112. Embracery is an attempt to influence a juror or jurors corruptly to one side by threats or menaces, or by promises, persuasions, entreaties, money, and the like. Every embracer who shall, directly or indirectly, promise or offer to any juror, or procure any juror to take money or any other bribe, present or reward, or any contract, obligation or security for the payment or delivery of any money, present or reward, or any other thing, or shall corruptly influence or attempt to influence any juror, shall, on conviction, be fined in a sum not exceeding five thousand dollars, or imprisoned in the Territorial prison not less than one year nor exceeding five years; and any juror convicted of taking any money, present or reward, or any other thing, or corruptly being influenced, as aforesaid, shall suffer the like imprisonment, and be forever disqualified to act as a juror. This section shall apply as well to the grand as the trial jurors.

Extortion.

SEC. 113. If any judge, justice of the peace, sheriff, coroner, constable, clerk or other officer, or assessor, of this Territory, ministerial or judicial, shall wilfully receive or take any fee or reward to do or execute his duty as such officer except such as is or shall be allowed by law, or if any such officer shall wilfully or corruptly ask or demand, as a condition precedent to the performance of his duties as such officer, any fee or reward except such as shall be allowed by law, every such officer so offending shall be deemed guilty of extortion, and, on conviction, shall be fined in any sum not less than two hundred dollars and not more than one thousand dollars, and, removed from office.

Justice or constable purchasing judgments.

SEC. 114. If any justice of the peace or constable of the same township shall, directly or indirectly, purchase any judgment, or part thereof, on the docket of such justice, or any docket in his possesssion, he shall, upon coviction thereof, be fined for each offense in any sum not less than one hundred nor more than one thousand dollars.

Selling or purchasing office.

SEC. 115. Every person holding or exercising any office under the laws and Organic act of this Territory who shall, for any reward or gratuity paid or agreed to be paid, grant to another the right or authority to discharge any of the duties of such office, shall be guilty of a misdemeanor, and, on conviction, shall be fined in any sum not exceeding five thousand dollars, and shall forfeit his office and be disabled from holding such office; and every person who shall give or make any agreement to give any reward or gratuity in consideration of any such grant or deputation, shall, upon conviction, be fined in any sum not less than five hundred nor exceeding five thousand dollars.

Sending threatening letters.

SEC. 116. If any person shall knowingly send or deliver any letter or writing threatening to accuse another of a crime or misdemeanor, or to expose or publish any of his infirmities or failings, with intent to extort money, goods, chattels or other valuable things; or threatening to maim, wound, kill or murder, or to burn or destroy his house or other property, or to accuse another of a crime or misdemeanor, or to expose or publish any of his infirmities, though no money, goods, chattels or valuable thing be demanded, such person so offending shall, on conviction, be fined in any sum not exceeding five hundred dollars, and imprisoned in the county jail not exceeding six months.

Opening sealed letters of another.

SEC. 117. Every person who shall wilfully open or read, or cause to be read, any sealed letter not addressed to himself without being authorized so to do either by the writer of such letter or the person to whom it was addressed; and every person who shall maliciously publish the whole or any part of such letter without the authority of the writer thereof or the person to whom the same was addressed, knowing the same to have been opened, shall, upon conviction, be punished by fine not exceeding one thousand dollars.

CHAPTER IX.

Offenses against the Public Peace and Tranquility.

SECTION 118. Disturbing the peace; assembling to disturb, etc.
120. Affray; unlawful assemblage.
122. Riot; disturbing religious meetings.
124. Liquor-selling at camp-meetings.
125. Officers not preventing duel.
126. Libel; truth to be given in evidence.

Disturbing the peace.

SEC. 118. If any person shall wilfully and maliciously disturb the peace or quiet of any neighborhood or family by loud or unusual noises, or by tumultuous and offensive conduct, threatening, traducing, quarreling, challenging to fight or fighting, every person convicted thereof shall be fined in a sum not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment, together with costs of suit.

Assembling to disturb peace and refusing to disperse.

SEC. 119. If two or more persons assemble for the purpose of disturbing the public peace or committing any unlawful act, and do not disperse on being desired or commanded so to do by a judge or justice of the peace, sheriff, coroner, constable or other public officer, the persons so offending shall, on conviction, be severally punished by fine in any sum not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment, together with costs of suit.

Affray.

SEC. 120. If two or more persons shall, by agreement, fight in a public place, to the terror of the citizens of this Territory, the persons so offending shall be de deemed guilty of an affray, and shall be severally punished by fine in any sum not exceeding one hundred dollars, or by imprisonment in the county jail not more than six months, together with costs of suit.

Unlawful assembly.

SEC. 121. If two or more persons shall assemble together to do an unlawful act, and separate without doing or advancing toward it, such persons shall be deemed guilty of an unlawful assembly, and, upon conviction thereof, shall be severally punished by fine in any sum not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment, together with costs of suit.

Riot.

SEC. 122. If two or more persons shall meet to do an unlawful act upon a common cause of quarrel, and make advances toward it, they shall be deemed guilty of riot, and, on conviction, shall be severally fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months; and if two or more persons shall actually do an unlawful act of violence either with or without a common cause of quarrel, or even do an unlawful act in a violent, tumultuous and illegal manner, they shall be deemed guilty of a riot, and, upon conviction thereof, shall be punished by fine in any sum not exceeding five hundred dollars each, or by imprisonment in the county jail for any term of time not exceeding six months, or by both such fine and imprisonment.

Disturbing religious meeting.

SEC. 123. Every person who shall wilfully disquiet or disturb any congregation or assembly of people met for religious worship, by making a noise, or by rude and indecent behavior or profane discourse within their place of worship, or so near to the same as to disturb the order or solemnity of the meeting; or menace, threaten or assault any person there being, shall be deemed guilty of a misdemeanor, and punished by fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment, together with the costs of suit.

Selling liquor at camp meeting.

SEC. 124. Every person who shall erect or keep a booth, tent, stall or other contrivance for the purpose of selling or otherwise disposing of any wine or spirituous or fermented liquors, or any drink of which wine, spirituous or fermented liquors form a part, within one mile of any camp or field meeting for religious worship during the time of holding such meeting, shall be deemed guilty of a misdemeanor, and punished by a fine not exceeding five hundred dollars.

Officer not preventing duel.

SEC. 125. If any judge, justice of the peace, sheriff, or other officer bound to preserve the public peace, shall have knowledge of an intention on the part of any two persons to fight with any deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the deed, every such officer shall be fined in a sum not exceeding one thousand dollars.

Libel.

SEC. 126. A libel is a malicious defamation, expressed either by printing or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation, or publish the natural defects of one who is alive, and thereby expose him or her to public hatred, contempt or ridicule. Every person, whether the writer or publisher, convicted of the offense shall be punished by fine in a sum not exceeding five thousand dollars, or by imprisonment in the county jail not exceeding six months. In all prosecutions for libel the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motive and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

Truth given in evidence.

CHAPTER X.

Offenses against Public Morality, Health and Police.

SECTION 127. Bigamy.
128. Knowingly marrying a married person.
129. Incest; obstructing highway or stream.
131. Selling unwholesome provisions.
132. Defacing or tearing down advertisements.
133. Possessing implements for burglary; carrying weapons with intent.
134. Refusing to join posse.

Bigamy.

SEC. 127. Bigamy consists in having two wives or two husbands at one and the same time, knowing that the former husband or wife is still alive. If any person or persons within this Territory, being married, or who shall hereafter marry, do at any time marry any person or persons, the former husband or wife being alive, the person so offending shall, on conviction thereof, be punished by a fine not exceeding one thousand dollars and be imprisoned in the Territorial prison not less than one year nor more than five years. It shall not be necessary to prove either of the said marriages by the register and certificate thereof, or other record evidence, but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when such second marriage shall have taken place without this Territory, cohabitation in this Territory after such second marriage shall be deemed the commission of the crime of bigamy. Nothing herein centained shall extend to any person or persons whose husband or wife shall have been continually absent from such person or persons for the space of five years together prior to the said second marriage, and he or she not knowing such husband or wife to be living within that time. Also nothing herein contained shall extend to any person that is or shall be at the time of the second marriage divorced by lawful authority from the bond of such former marriage, or to any person when the former marriage hath been by lawful authority made void.

Knowingly marrying a married person.

SEC. 128. If any man or woman, being married, shall knowingly marry the wife or husband of another, such man or woman shall, upon conviction, be fined not less than one thousand dollars, or imprisoned in the Territorial prison not less than one nor more than two years.

Incest.

SEC. 129. Persons being within the degrees of consanguinity, within which marriages are declared by law to be incestuous and void, who shall intermarry with each other, or who shall commit fornication or adultery with each other, shall, on conviction, be punished by imprisonment in the Territorial prison not less than one nor exceeding ten years.

Obstructing highway, etc.

Offensive business.

Pollute stream, etc.

Nuisance abated.

SEC. 130. If any person shall obstruct or injure, or cause or procure to be obstructed or injured, any public road or highway, or common street or alley of any city, town or village; or any public bridge or causeway, mill-race, mill-dam or ditch, or public river or stream; or shall continue such obstruction so as to render the same inconvenient or dangerous to pass; or shall erect or establish any offensive trade, manufacture or business, or continue the same after it has been erected or established; or shall in anywise pollute or obstruct any water-course, lake, pond, marsh or common sewer, or continue such obstruction or pollution so as to render the same offensive or unwholesome to the county, town, city, village or neighborhood thereabouts, every person so offending shall, upon conviction, be fined not exceeding one thousand dollars; and every such nuisance may, by order of the court before whom the conviction may take place, or of the district court, be removed and abated by the sheriff of the county.

Selling unwholesome meat, provisions, etc.

SEC. 131. If any person or persons shall knowingly sell any flesh of any deceased animal, or other unwholesome provisions, or any provisions or adulterated drink or liquors, every person so offending shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than six months.

Defacing or tearing down advertisements, etc.

SEC. 132. If any person shall intentionally deface or obliterate, tear or destroy, in whole or in part, any copy or transcript, or extract from or of any law of the United States or of this Territory, or any proclamation, advertisement or notification set up at any place in this Territory by authority of any law of the United States or of this Territory, or by order of any court, such person, on conviction, shall be fined not more than one hundred dollars nor less than twenty dollars, or be imprisoned in the county jail not more than one month; *provided,* this section shall not extend to defacing, tearing down, obliterating or destroying any law, proclamation, publication, notification, advertisement or order after the time for which the same was by law to remain set up, shall have expired.

Possessing instruments of burglary.

SEC. 133. If any person shall have found upon him or her any pick-lock, crow-key, bit or other instrument or tool, with intent feloniously to crack and enter into any dwelling-house, store, shop, warehouse, or other building containing valuable property, or shall be found in the aforesaid buildings with intent to steal any money, goods and chattels, every person so offending shall, on conviction thereof, be imprisoned in the Territorial prison for a term not less than one year nor more than five years; and if any person shall have upon him or her any pistol, gun, knife, dirk, bludgeon, or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined not more than one hundred dollars, or imprisoned in the county jail not more than three months.

Carrying deadly weapons with intent.

Refusing to join *posse comitatus.*

SEC. 134. Every male person above eighteen years of age who shall neglect or refuse to join the *posse comitatus*, or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person or persons against whom there may be issued any process, or by neglecting to aid and assist in retaking any person or persons who, after being arrested or confined, may have escaped from such arrest or imprisonment; or by neglecting or refusing to aid and assist in preventing any breach of the peace or the commission of any criminal offense, being thereto lawfully required by the sheriff, deputy sheriff, coroner, constable, judge or justice of the peace, or other officer concerned in the administration of justice, shall, upon conviction, be fined in any sum not less than fifty nor more than one thousand dollars, or shall be imprisoned in the county jail for a period of thirty days, or by both such fine and imprisonment.

CHAPTER XI.

Offenses Committed by Cheats, Swindlers and Other Fraudulent Persons.

SECTION 135. Fraudulent conveyance.
136. Obtaining credit by false representations.
137. False pretences; fraudulently selling.
139. False weights and measures.
140. Removal of property to defraud.
141. Fraudulent concealment of.

Fraudulent conveyance

SEC. 135. All and every person who shall be a party to any fraudulent conveyance of any lands, tenements or hereditaments, goods or chattels, or any right or interest issuing out of the same; or to any bond, suit, judgment or execution, contract or conveyance, had, made or contrived, with intent to deceive and defraud others; or to defeat, hinder or delay creditors or others of their just debts, damages or demands; or who, being parties as aforesaid, at any time, shall wilfully and willingly put in use, avow, maintain, justify or defend the same, or any of them, as true and done, had or made in good faith, or upon good consideration; or shall alien, assign or sell any of the lands, tenements, hereditaments, goods, chattels, or other things before mentioned, to him, her or them conveyed as aforesaid, or any part thereof, he, she or they so offending shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars, or be imprisoned in the county jail not less than six months.

Obtaining credit by false representations.

SEC. 136. If any person, by false representation of his own wealth or mercantile correspondence and connections, shall obtain a credit thereby, and defraud any person or persons of money, goods, chattels, or any valuable thing; or if any person shall cause or procure others to report falsely of his wealth or mercantile character, and by thus imposing upon any person or persons obtain credit, and thereby fraudulently get into the possession of goods, wares or merchandise, or other valuable thing, every such offender shall be deemed a swindler, and, on conviction, shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined not exceeding one thousand dollars and imprisoned in the county jail not more than six months.

False pretences.

SEC. 137. If any person or persons shall, knowingly and designedly, by any false pretence or pretences, obtain from any other person or persons any chose in action, money, goods, wares, chattels, effects, or other valuable thing, with intent to cheat or defraud any such person or persons of the same, every person so offending shall be deemed a cheat, and, on conviction, shall be fined not exceeding one thousand dollars and imprisoned in the county jail not more than six months, and be sentenced to restore the property so fraudulently obtained, if it can be done.

Fraudulently selling land.

SEC. 138. Any person or persons, after once selling, bartering or disposing of any tract or tracts of land, town lot or lots, or exacting any bond or agreement for the sale of any lands, or town lot or lots, who shall again, knowingly and fraudulently, sell, barter or dispose of the same tract or tracts of land, or town lot or lots, or any part thereof, or shall knowingly and fraudulently execute any bond or agreement to sell, or barter or dispose of the same land, or lot or lots, or any part thereof, to any other person or persons for a valuable consideration, every such offender, upon conviction thereof, shall be punished by imprisonment in the Territorial prison not less than one year nor more than five years.

False weights and measures.

SEC. 139. If any person shall knowingly sell any goods, wares or merchandise, or any valuable thing, by false weight or measure, or shall knowingly use false measures at any mill in taking toll for grinding corn, wheat, rye or other grain, he or she shall be deemed a common cheat, and, on conviction, shall be fined not exceeding two hundred dollars and be imprisoned in the county jail not more than six months.

Fraudulently removing property.

SEC. 140. If any debtor shall fraudulently remove his property or effects out of this Territory, or shall fraudulently sell, convey, or assign, or conceal his property or effects, with intent to defraud, hinder or delay his creditors of their just rights, claims or demands, he shall, on conviction, be punished by imprisonment in the county jail for any term not exceeding six months, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

Fraudulently concealing or disposing of property.

SEC. 141. Any person against whom an action is pending, or against whom a judgment has been rendered for the recovery of any personal property or effects, who shall fraudulently conceal, sell or dispose of such property or effects with intent to hinder, delay or defraud the person bringing such action or recovering such judgment, or shall with such intent remove such property or effects beyond the limits of the county in which it may be at the time of the commencement of such action or the rendering of such judgment, shall, on conviction, be punished as provided in the next preceding section.

CHAPTER XII.

Fraudulent and Malicious Mischief.

SECTION 142. Poisoning animals; injuring animals and goods.
144. Injuring dwelling-houses, etc.
146. Injuring property of water companies.
147. Injuring jail, etc.
148. Firing woods or prairie.

Poisoning animals.

SEC. 142. Every person who shall wilfully administer any poison to any cattle or domestic animal, or maliciously expose any poisonous substance, with the intent that the same shall be taken or swallowed by any cattle or domestic animal, shall, upon conviction, be punished by imprisonment in the Territorial prison not less than one year nor exceeding three years, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Injuring animals.

SEC. 143. Every person who shall maliciously kill, maim or wound any horse, ox, or other domestic animal belonging to another, or shall maliciously or cruelly beat or torture any such animal, whether belonging to himself or another, shall, upon conviction, be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment, together with costs of suit; and every person who shall wilfully, unlawfully and maliciously destroy, burn, cut, or otherwise injure any goods, chattels or property of any description whatever belonging to another, shall be, upon conviction, punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment, together with costs of suit.

Injuring goods.

Injuring dwelling-houses, etc.

SEC. 144. Every person who shall wilfully, unlawfully and maliciously break, destroy or injure the door or window of any dwelling-house, shop, store, or other house or building, or sever therefrom, or from any gate, fence or inclosure any part thereof, or any material of which it is formed; or sever from the freehold any produce thereof, or anything attached thereto; or pull down, injure or destroy any gate, post, railing or fence, or any part thereof; or cut down, lap, girdle, or otherwise injure or destroy any fruit or ornamental or shade tree, being the property of another, shall, on conviction, be punished by a fine not more than one hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Burning or destroying raft, pile, etc.

SEC. 145. Every person who shall wilfully and maliciously burn, infuse or destroy any pile or raft of wood, plank, boards or other lumber, or any part thereof; or cut loose or set adrift any such raft, or part thereof; or shall cut, break, infuse, sink or set adrift any boat, canoe, skiff, or other vessel or water craft, being the property of another, shall, on conviction thereof, be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months.

Setting boat adrift.

Injuring any dam, reservoir, ditch, etc.

SEC. 146. Every person who shall wilfully and maliciously cut, break, injure or destroy any bridge, milldam, canal, flume, aqueduct, reservoir, or other structure erected to create hydraulic power or to conduct water for mining, manufacturing or agricultural purposes, or any embankment necessary to the same, or either of them; or shall wilfully or maliciously make or cause to be made any aperture in such dam, canal, flume, acqueduct, reservoir, embankment or structure, with intent to injure or destroy the same, shall, on conviction thereof, be punished by fine in any sum not more than one thousand dollars, or by imprisonment in the Territorial prison not less than one year nor more than two years, or by both such fine and imprisonment.

Injuring jail, etc.

SEC. 147. If any person shall wilfully and intentionally break down, pull down, or otherwise destroy, injure, in whole or in part, any public jail or other place of confinement, every person so offending shall, on conviction, be fined in any sum not exceeding ten thousand dollars nor less than the value of said jail or other place of confinement so destroyed, or of such injury as may have been thereto by such unlawful act, and be imprisoned in the Territorial prison for any term not exceeding five years nor less than one year.

Firing woods or prairie.

SEC. 148. If any person or persons shall wilfully and intentionally, or negligently and carelessly, set on fire, or cause or procure to be set on fire, any wood, prairie, grass, or other land or grounds in this Territory, every person so offending shall, on conviction before any court of competent jurisdiction, be punished by fine in any sum not less than two hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than ten days nor more thas six months, or by both such fine and imprisonment, in the discretion of the jury trying the case; *provided*, that this section shall not extend to any person or persons who shall set on fire any wood, prairie, grass or other lands adjoining to their firw farm, house, plantation or enclosure for the necessary preservation thereof from accident or injury by fire, by giving to his, her, or their neighbors reasonable notice of such intention.

CHAPTER XIII.

Miscellaneous Offenses.

SECTION 149. Issuing paper money; district attorney to prosecute.
150. Vending without license; jurisdiction of offense; fines.

Issuing paper money.

SEC. 149. If any person or persons, association, company or corporation shall make, issue or put in circulation any bill, check, ticket, certificate, promissory note, or the paper of any bank, to circulate as money, the said person or persons, association, company or corporation, or the persons forming the same, shall, for the first offense, be deemed guilty of a misdemeanor, and for each and every subsequent offense be deemed guilty of felony, and shall be punished as hereinafter provided. Any person or persons who shall, upon indictment, be convicted of having violated the provisions of this act shall be punished, for the first offense, by imprisonment in the county jail not more than three months, or by fine not exceeding two thousand dollars, or by both such fine and imprisonment; and for the second and every subsequent offense shall be punished by imprisonment in the Territorial prison for a term not less than one year nor more than five years, at the discretion of the court before whom such person or persons may be tried and convicted. It shall be the duty of the district attorney for each judicial district in the Territory to prosecute all offenses against this act; and it shall be the duty of the judge of the courts to give this law in the charge of the grand

Duty of district attorney and judge.

jury, who shall inquire into and present all violations thereof.

Vending without license.

SEC. 150. Any person or persons who shall vend, by wholesale or retail, any spirituous, or malt, or vinous liquors, or any goods, wares or merchandise, within any county of this Territory without first obtaining a license so to do, as required by law, shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, be fined in a sum of not less than twenty-five nor more than one hundred dollars for each and every offense. Any justice of the peace of the county in which such offense is charged to have been committed shall have jurisdiction to try and determine the same. Upon the trial of any criminal action provided for by this act the defendant shall be deemed not to have procured any such license unless he prove the contrary to the satisfaction of the court or jury by whom the same is tried. All fines collected under this act shall be paid into the treasury of the county in which the conviction is had.

Fine.

Jurisdiction of offense.

Defendant must prove the obtaining of license.

CHAPTER XIV.

General Provisions.

SECTION 151. Offenses; misdemeanor, how punished.
152. Territorial prison; effect of sentence of.
154. Person defined; females.
156. Intent to injure; reward for arrests.
158. Attempt to commit offenses.
159. Not to affect pending proceedings.

Common law offenses recognized; their punishment.

SEC. 151. All offenses recognized by the common law as crimes and not herein enumerated shall be punished, in case of felony, by imprisonment in the Territorial prison for a term not less than one year nor more than five years; and in case of misdemeanors, by imprisonment in the county jail for a term not exceeding six months or less than one month, or by fine not exceeding five hundred dollars, or both such fine and imprisonment. And whenever any fine is imposed for any felony or misdemeanor, whether such be by statute or at common law, the party upon whom the fine is imposed shall be committed to the county jail, when not sentenced to the Territorial prison, until the fine is paid;

Fines; imprisonment one day for every two dollars.

and he shall be imprisoned at the rate of one day for each two dollars until such fine is paid.

Territorial prison.

SEC. 152. Until a Territorial prison is provided, the county jail of each county shall be deemed the Territoral prison.

Effect of imprisonment in the Territorial prison.

SEC. 153. A sentence of imprisonment in the Territorial prison for a term less than life suspends all civil rights of the persons sentenced during the term of imprisonment, and forfeits all public offices and all private trusts, authority and powers; and the person sentenced to such imprisonment for life shall thereafter be deemed civilly dead.

Person defined.

SEC. 154. When the term "person" is used in this act to designate the party whose property may be the subject of any offense, such term shall be construed to include the United States, this Territory, or any other State or Territory, government or county which may lawfully own the property within this Territory, and all public and private corporations, as well as individuals.

Females included.

SEC. 155. The provisions of this act shall extend to females.

Intent to injure, what sufficient.

SEC. 156. When any intent to injure, defraud or cheat is required by law to be shown in order to constitute any offense, it shall be sufficient if such intent be to injure, defraud or cheat the United States, this Territory, or any other State, Territory or county, or the government, or any public office thereof, or any county, city or town, or any corporation, body politic, or private individual.

SEC. 157. If any person who has been sentenced to confinement in the Territorial prison by any court having competent authority within this Territory, shall escape therefrom, or shall be charged with murder, the perpetration of any crime punishable with death, the Governor is authorized, upon satisfactory evidence of the guilt of the accused, to offer a reward for his or her apprehension, which reward shall not exceed the sum of one thousand dollars, and shall be paid out of the Territorial treasury.

Attempt to commit offenses.

SEC. 158. Every person who shall attempt to commit a public offense, and in such attempt shall do any act toward the commission of such offense, but shall fail in the perpetration thereof, or shall be prevented or intercepted in executing the same, upon conviction thereof, shall, in cases where no provision is made by law for the punishment of such attempt, be punished as follows:

Punishment.

First—If the offense so attempted to be committed be such as is punishable by death, or by imprisonment in the Territorial prison for a term which may extend to life, the person convicted of such attempt shall be punished by imprisonment in the Territorial prison not exceeding ten years.

Second—If the offense so attempted is a misdemeanor, the person so convicted of such attempt shall be punished by a fine not exceeding one-half of the largest amount, or by imprisonment in the county jail or Territorial prison, as the case may be, for a term not exceeding one-half of the longest time prescribed by law, upon a conviction of the offense so attempted.

Third—If the offense so attempted is a felony not punishable by death or imprisonment which may extend to life, the person convicted of such offense shall be punished by imprisonment in the Territorial prison for a term not exceeding one-half the longest time which may be imposed, upon a conviction of the offense so attempted.

Not to affect pending proceedings.

SEC. 159. Nothing in this act shall be construed to affect any criminal proceedings or prosecution now pending in any of the courts of this Territory, but the same shall be prosecuted to judgment and execution in the same manner as if the act had been passed; and all persons charged, or who may hereafter be charged, with crimes or misdemeanors under the laws now in force, shall be prosecuted to the same extent that they might have been, had no act on the subject been passed.

APPROVED, *January* 14, 1875.

AN ACT

TO REGULATE PROCEEDINGS IN CRIMINAL CASES IN THE COURTS OF JUSTICE IN THE TERRITORY OF IDAHO.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

CHAPTER I.

General Provisions.

SECTION 1. Crimes defined.
2. Offenses, how divided,
3. Punishment of felony.
5. No punishment except on conviction.
6. Prosecutions—when by indictment; when not.
7. Criminal action, what is.
8 In what name prosecuted.
9. Defendant, who.
10. Rights of defendant.
11. Not subject to a second prosecution.
12. Person charged cannot be compelled to criminate himself.
13. Conviction, what necessary to.

SECTION 1. A crime or public offense is an act or omission forbidden by law, and to which is annexed, on conviction: **Crimes defined.**

First—Death.
Second—Imprisonment.
Third—Fine.
Fourth—Removal from office.

Fifth—Disqualification to hold or enjoy any office of honor, trust or profit in this Territory.

Offenses, how divided

SEC. 2. Public offenses are divided into:

First—Felonies.

Second—Misdemeanors.

Punishment of felony.

SEC. 3. A felony is a public offense punishable with death or by imprisonment in the Territorial prison.

SEC. 4. Every public offense is a misdemeanor.

No punishment except on conviction.

SEC. 5. No person can be punished for a public offense except upon legal conviction in a court having jurisdiction.

Prosecutions, when by indictment, when not.

SEC. 6. Every public offense must be prosecuted by indictment, except:

First—When proceedings are had for the removal of a civil officer of the Territory.

Second—Offenses arising in the militia when in actual service in time of war, or which this Territory may keep, with the consent of Congress, in time of peace.

Third—Offenses tried in the justices' and probate courts.

Criminal action, what is

SEC. 7. The proceedings by which a party charged with a public offense is accused and brought to trial and punishment, shall be known as a criminal action.

In what name prosecuted.

SEC. 8. A criminal action shall be prosecuted in the name of the people of the United States in the Territory of Idaho as a party against the party charged with the offense.

Defendant, who.

SEC. 9. The party prosecuted in a criminal action is designated in this act as the defendant.

Rights of defendant.

SEC. 10. In a criminal action the defendant is entitled;

First—To a speedy and public trial.

Second—To be allowed counsel, as in civil actions; or he may appear and defend in person, or with counsel; and

Third—To produce witnesses on his behalf, and to be confronted with the witnesses against him in the presence of the court.

Not subject to a second prosecution

SEC. 11. No person shall be subject to a second prosecution for a public offense for which he has once been prosecuted and duly convicted or acquitted.

Person charged can not be compelled to criminate himself.

SEC. 12. No person shall be compelled, in a criminal action, to be a witness against himself; nor shall a person charged with a public offense be subjected, before conviction, to any more restraint than is necessrry for his detention to answer the charge.

Conviction, what necessary to.

SEC. 13. No person can be convicted of a public offense, tried by indictment, unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty, or upon judgment against him upon a demurrer to the indictment in the case, mentioned in section 292; or upon a judgment of a police justice or probate court, a jury having been waived.

CHAPTER II.

Prevention of Public Offenses.

SECTION 14. Lawful resistance, by whom made.
15. In what cases.
16. Others may aid.
17. By public officers, how.
18. Persons acting in their aid justified.
19. Complaint, how made.
20. Witnesses to be examined.
21. Warrant of arrest, when to be issued.
22. Proceedings when charge is controverted.
23. When person to be discharged.
24. Security to keep the peace.
25. Effect of giving security or not.
26. Magistrate, when may discharge.
27. Bond, where filed.
28. Proceedings when assault made in presence of court.
29. Bond, when deemed broken.
31. Evidence of breach.
32. Surety not required, except when.
33. Police in cities and towns.
34. Power of sheriff or public officer when resisted.
35. Officer to report names of resisters.
36. Refusal to assist officer, misdemeanor.
37. Governor to aid sheriff.
38. Riotous assemblage, how dispersed.
39. Penalty for not dispersing.
40. Refusal to aid officer misdemeanor.
41. Officer neglecting to act in quelling riot when notified, guilty of misdemeanor.
42. Officer may command aid.
43. Armed force, by whose order to act.
44. Troops may be ordered out, when and by whom.
45. Troops to be subject to order according to law.
46. Governor may proclaim insurrection, when; and order out militia.
47. Governor may revoke, when.
48. Penalty for disobeying proclamation.

Lawful resistance, by whom made

SEC. 14. Lawful resistance to the commission of a public offense may be made:

First—By the party about to be injured.

Second—By other parties.

In what cases.

SEC. 15. Resistance sufficient to prevent the offense may be made by the party about to be injured:

First—To prevent an offense against his person or his family, or some member thereof.

Second—To prevent an illegal attempt, by force, to take or injure property in his lawful possession.

Others may aid.

SEC. 16. Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense.

By public officers; how.

SEC. 17. Public offenses may be prevented by the intervention of the officers of justice:

First—By requiring surety to keep the peace.

Second—By forming a police in cities and towns, and requiring their attendance in exposed places.

Third—By suppressing riots.

Persons acting in their aid justified.

SEC. 18. Whenever the officers of justice are authorized to act in the prevention of public offenses, other persons who, by their command, act in their aid, are justified in so doing.

Complaint; how made.

SEC. 19. A complaint may be made before any of the magistrates mentioned in section one hundred and two, that a person has threatened to commit an offense against the person or property of another.

Witnesses to be examined.

SEC. 20. When the complaint is laid before the magistrate, he shall examine on oath, the complainant and any witness he may produce, and shall take their depositions in writing, and cause them to be subscribed by the parties making them.

Warrant of arrest; when to be issued.

SEC. 21. If it appear from the depositions that there is just reason to fear the commission of the offense threatened by the person so complained of, the magistrate shall issue a warrant directed generally to the sheriff of the county, or any constable, marshal, or policeman in the Territory, reciting the substance of the complaint, and commanding the officer forthwith to arrest the person complained of, and bring him before the magistrate.

Proceedings; when charge is controverted.

SEC. 22. When the person complained of is brought before the magistrate, if the charge be controverted, the magistrage shall take testimony in relation thereto. The evidence must be reduced to writing, and subscribed by the witnesses.

When person to be discharged.

SEC. 23. If it appear that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of shall be discharged.

Security to keep the peace.

SEC. 24. If, however, there be just reason to fear the commission of the offense, the person complained of may be required to enter into a bond, in such sum, not exceeding five thousand dollars, as the magistrate may direct, with one or more sufficient sureties to keep the peace toward the people of this Territory, and particularly toward the complainant. The bond shall be valid and binding for six months, and may upon renewal of the complaint, be extended for a longer period, or a new bond may be required.

Effect of giving security or not.

SEC. 25. If the bond required by the last section be given, the party complained of shall be discharged; if he do not give it, the magistrate shall commit him to prison, specifying in the warrant the requirment to give security, the amount thereof, and the omission to give the same.

Magistrate; when may discharge.

SEC. 26. If the person complained of be committed for not giving the bond required, he may be discharged by any magistrate, upon giving the same.

Bond; when filed.

SEC. 27. A bond given as provided in section twenty-four, must be filed by the magistrate in the office of the county recorder.

Proceedings when assault made in presence of court.

SEC. 28. Any person who, in the presence of a court or magistrate, shall assault, or threaten to assault, another, or to commit any offense against his person or property, may be ordered by the court or magistrate to give security as is provided in section twenty-four, or if he refuse to do so, may be committed, as provided in section twenty-four.

Bond when deemed broken.

SEC. 29. A bond to keep the peace shall be deemed broken on a conviction of the person complained against, of a breach of the peace.

SEC. 30. Upon the District Attorney's producing evidence of such conviction to the district court of the proper county, in the Territory of Idaho, the court shall order the bond to be prosecuted, and the attorney shall thereupon commence an action on the same, in the name of the people of this Territory.

Evidence of breach.

SEC. 31. In the action, the offense stated in the record of conviction, shall be alleged as the breach of the bond, and shall be conclusive evidence thereof.

Surety not required, except when.

SEC. 32. No security to keep the peace or be of good behavior, shall be required except as herein prescribed.

Police in cities and towns.

SEC. 33. The mayor, or other officer, having the direction of the police, in a city, town or village, shall order a force sufficient to keep the peace, to attend any public meeting, when he is satisfied that a breach of the the peace is to be apprehended.

Power of sheriff or public officer; when resisted.

SEC. 34. When a sheriff, or other public offcer, authorized to execute process, shall find or have reason to apprehend that resistance will be made to the execution of his process, he may command as many male inhabitants of his county as he may think proper, and any military company or companies in the county, armed and equipped, to assist him in overcoming the resistance, and if necessary, in seizing, arresting, and confining the resisters and their aiders and abettors, to be punished according to law.

Officer to report names of resisters.

SEC. 35. The officer shall certify to the court from which the process issued the names of the resisters and their aiders and abettors, to the end that they may be proceeded against for their contempt of court.

Refusal to assist officer; misdemeanor.

SEC. 36. Every person commanded by a public officer to assist him in the execution of process, as provided in section thirty-four, who shall, without lawful cause, refuse or neglect to obey the command, shall be deemed guilty of a misdemeanor.

Governor to aid sheriff.

SEC. 37. If it appear to the Governor that the power of any county is not sufficient to enable the sheriff to execute process delivered to him, he shall on the application of the sheriff, order such military force from any other county or counties as shall be necessary.

Riotous assemblage; how disposed.

SEC. 38. When six or more persons, whether armed or not, shall be unlawfully or riotously assembled, the sheriff of the county and his deputies, or the constables of the county and the justices of the peace, shall go among the persons so assembled or as near to them as possible, and shall command them, in the name of the people of the United States and Territory of Idaho, immediately to disperse.

Penalty for not dispersing.

SEC. 39. If the persons assembled do not immediately disperse, the magistrates and officers shall arrest them, that they may be punished according to law, and for that purpose may command the aid of all persons present or within the county.

Refusal to aid officer; misdemeanor.

SEC. 40. If a person so commanded to aid the magistrates or officers neglect or refuse to do so, he shall be deemed guilty of a misdemeanor, and shall be punished accordingly.

Officer neglecting to act in quelling riot.

SEC. 41. If a magistrate or officer, having notice of an unlawful or riotous assembly, as provided in section thirty eight, neglect to proceed to the place of assembly, or as near thereto as he can, with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he shall be deemed guilty of a misdemeanor.

Officer may command aid.

SEC. 42. If the persons so assembled and commanded to disperse, do not immediately disperse, any magistrate or officer before mentioned may command the aid of a sufficient number of persons, and may proceed in such manner as in his judgment is necessary to disperse the assembly and arrest the offenders.

Armed force: by whose orders to act.

SEC. 43. When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, or arresting the offenders, it shall obey such orders in relation thereto as may have been made by the Governor, or by a judge of the court of record, or the sheriff of the county, or by a magistrate mentioned as in section thirty-eight.

Troops may be ordered out; when and by whom.

SEC. 44. When there is an unlawful or riotous assembly, with the intent to commit a felony, or to offer violence to person or property, or to resist by force the laws of the Territory, and the fact is made to appear to the Governor, or to a judge of the district court or probate court, or to the sheriff of the county, either of those officers may issue an order, directed to the commanding officer of a division brigade, regiment, battalion or company, to order his command, or any part thereof (describing the kind and number of troops) to appear at a time and place therein specified, to aid the civil authorities in suppressing violence and enforcing the laws.

Troops to be subject to order, according to law.

SEC. 45. The commanding officer to whom the order is given, shall forthwith obey the same, and the troops so required shall appear at the time and place appointed, armed and equipped with ammunition as directed, and shall execute any order that they shall then and there receive, according to law.

Governor may proclaim insurrection, when; and order out militia.

SEC. 46. When the Governor shall be satisfied that the execution of civil or criminal process has been forcibly resisted in any county by bodies of men, or that combinations to resist the execution of process by force exists in any county, and that the power of the county has been exerted and has not been sufficient to enable the officer having the process, to execute it, he may, on the application of the officer, or of the district attorney, or probate judge of the county, by proclamation to be published in such papers as he shall direct, declare the county to be in a state of insurrection; and may order into the service of the Territory such number and description of volunteer or uniform companies, or other militia of the Territory, as he shall deem necessary to serve for such term and, under the command of such officer or officers as he shall direct.

Governor may revoke; when.

SEC. 47. The Governor may, when he shall think proper, revoke the proclamation authorized by the last section, or declare that it shall cease at such time and in such manner as he shall direct.

Penalty for disobeying proclamation.

SEC. 48. Any person who shall, after the publication of the proclamation authorized by section forty-six, resist or aid in resisting the execution of process in any county so declared to be in a state of insurrection, or who shall aid or attempt the rescue or escape of any person from lawful custody or confinement, or who shall resist or aid in resisting any force ordered out by the Governor to quell or suppress an insurrection, shall be punished by imprisonment in a Territorial prison, for a term not less than two years.

CHAPTER III.

Proceedings for Removal of Public Officers.

SECTION 49. Territorial officers subject to impeachment.
50. Impeachment, how tried.
51. Articles, how delivered.
52. Hearing on, and service.
53. Service; how made.
54. Proceedings when defendant fails to appear.
55. Answer; how made.
56. Objection; how made.
57. Objection overruled; defendant must answer.
58. Oath to be taken by council.
59. Hearing may be adjourned.
60. Two-thirds necessary to convict.
61. Judgment; how pronounced and entered.
62. Resolution; majority to adopt.
63. Extent of the judgment.
64. Effect of judgment.
65. Suspension of defendant; proceedings on.
66. Indictment not barred by impeachment.
67. Grand Jury may present.
68. Requisites of accusation.
69. To be delivered to district attorney; notice to be given.
70. Defendant; when to appear.
71. May answer or demur.
72. Objection; form of.
73. Denial; may be oral.
74. Objection overruled; proceedings when.
75. Proceedings when defendant pleads guilty; or refuses to plead.
76. Trial by jury; how conducted.
77. Process to be allowed for witnesses.
78. Proceedings on conviction.
79. Appeal; how taken; effect of.
80. When district attormey impeached; proceedings on.

Territorial officers subject to impeachment.

SEC 49. Any Territorial officer, created by Territorial law, shall be liable for impeachment for any misdemeanor in office.

SEC. 50. All impeachments shall be tried by the Council; when sitting for that purpose, the councilmen shall be upon oath or affirmation.

Impeachment; how tried.

SEC. 51. When a civil officer of the Territory is impeached by the House of Representatives for a misdemeanor in office, the articles of impeachment shall be delivered to the President of the Council.

Articles how delivered.

SEC. 52. The Council shall assign a day for hearing the impeachment, and shall inform the House of Representatives thereof. The President of the Council shall cause a copy of the articles of impeachment, with a notice to appear and answer the same, at the time and place appointed, to be served on the defendant, not less than ten days before the day fixed for hearing.

Hearing on and service.

SEC. 53. The service must be upon the defendant personally, or if he cannot upon dilligent inquiry, be found within the Territory, the Council, upon due proof of that fact, may order that publication be made in such manner as they deem proper, of a notice requiring him to appear at a specified time and place, and answer to the articles of impeachment.

Service, how made.

SEC. 54. If the defendant do not appear, the Council, upon proof of service or publication, as provided in the last two sections, may, of their own motion, or for cause shown assign another day for hearing the impeachment; or may then, or at any other time which they may appoint, proceed, in the absence of the defendant, to trial and judgment.

Proceedings when defendant fails to appear.

SEC. 55. When the defendant appears he must answer the articles of impeachment, which he may do, either by objecting to the sufficiency of the same or of any article therein, or by denying the truth of the same.

Answer, how made.

SEC. 56. If the the defendant object to the sufficiency of the impeachment, the objection must be in writing, but need not be in any specific form, it being sufficient if it present intelligibly the grounds of the objection. If he deny the truth of the impeachment, the denial may be oral and without oath, and shall be entered upon the journal.

Objection how made.

SEC. 57. If an objection to the sufficiency of the impeachment be not sustained by a majority of the members of the Council, who heard the argument, the defendant shall be ordered forthwith to answer the articles of impeachment. If he plead guilty, or refuse to plead, the Council shall render judgment of conviction against him. If he deny the matters charged the Council shall, at such time as they may appoint, proceed to try the impeachment.

Objection overruled, defendant must answer.

Oath to be taken by council.

SEC. 58. At the time and place appointed, and before the Council proceed to act on the impeachment, the secretary shall administer to the President of the Council, and the President of the Council to each of the members of the Council then present, an oath or affirmation, truly and impartially to hear, try and determine the impeachment; and no member of the Council shall act or vote upon the impeachment or any question arising thereon, without having taken such oath or affirmation.

Hearing may be adjourned.

SEC. 59. The oath or affirmation having been administered, the Council shall proceed to try and determine the impeachment, and may adjourn the trial from time to time.

Two-thirds necessary to convict

SEC. 60. The defendant cannot be convicted on impeachment without the concurrence of two-thirds of the members present; and if two-thirds of the members do not concur in a conviction, he shall be declared acquitted.

Judgment how pronounced and entered

SEC. 61. After conviction, the Council shall immediately, or at such other time as they shall appoint, pronounce judgment, which shall be in the form of a resolution entered upon the journal of the Council. The vote upon the passage thereof shall be taken by yeas and nays, and shall, in like manner, be entered upon the journal.

Resolution, majority to adopt.

SEC. 62. On the adoption of the resolution by a majority of the members present, who voted on the question of acquittal or conviction, the same shall be the judgment of the Council.

Extent of the judgment.

SEC. 63. The judgment may be that the defendant be suspended and removed from office, or that he be removed from office and disqualified to hold and enjoy a particular office or class of offices, or any office of honor, trust or profit under the laws ofthis Territory,.

Effect of judgment.

SEC. 64. If judgment of suspension be given, the defendant shall, during the continuance thereof, be disqualified from receiving the salary, fees or emoluments of the office.

Suspension of defendant, proceedings.

SEC. 65. Whenever articles of impeachment against any officer subject to impeachment, shall be presented to the President of the Council, such officer shall be temporarily suspended from his office, and shall not act in his official capacity until duly acquitted. Upon such suspension of any Territorial officer, created by Territorial law, the Governor shall immediately take charge of his office, and such office shall at once be temporarily filled by appointment by the Governor, by and with the advice and consent of the Council, until the acquittal of the party impeached; or in case of his removal, then until the vacancy be filled as provided by law.

Indictment not barred by impeachment. SEC. 66. If the offense for which the defendant is impeached be the subject of an indictment, the indictment shall not be barred by the impeachment.

Grand jury may present. SEC. 67. An accusation in writing against any district, county or township officer, for willful or corrupt misconduct in office, may be presented by the grand jury of the county for which the officer accused is elected or appointed.

Requisites of accusation. SEC. 68. The accusation shall state the offense charged, in ordinary and concise language, and without repetition.

To be delivered to district attorney; notice to be given. SEC. 69. The accusation shall be delivered by the foreman of the grand jury to the district attorney of the county, who shall cause a copy thereof to be served upon the defendant, and require by notice, in writing, of not less than ten days, that he appear before the district court then sitting, or at the next term, and answer the accusation. The original accusation shall then be filed with the clerk of the district court.

Defendant, when to appear. SEC. 70. The defendant must appear at the time appointed in the notice and answer the accusation, unless for some sufficient cause the court assign another day for that purpose. If he do not appear, the court may proceed to hear and determine the accusation in his absence.

May answer or demur. SEC. 71. The defendant may answer the accusation, either by objecting to the sufficiency thereof, or of any article therein or by denying the truth of the same.

Objection, form of. SEC. 72. If he object to the legal sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it present intelligibly the grounds of the objection.

Denial may be oral. SEC. 73. If he deny the truth of the accusation, the denial may be oral and without oath, and shall be entered upon the minutes.

Objection overruled; proceedings when. SEC. 74. If an objection to the sufficiency of the accusation be not sustained, the defendant shall be required to answer the accusation forthwith.

Proceedings when defendant pleads guilty, or refuses to plead. SEC. 75. If the defendant plead guilty, or refuse to answer the accusation, the court shall render judgment of conviction against him. If he deny the matters charged, the court shall immediately, or as soon thereafter as practicable proceed to try the accusation.

Trial by jury, how conducted. SEC. 76. The trial shall be by a jury, and shall be conducted in all respects in the same manner as the trial of an indictment for a misdemeanor.

Process to be allowed for witnesses.

SEC. 77. The district attorney and the defendant shall be respectively entitled to such process as may be necessary to enforce the attendance of witnesses as upon the trial of an indictment.

Proceedings on conviction.

SEC. 78. Upon a conviction the court shall immediately, or within five days, as they may appoint, pronounce judgment that the defendant be removed from office. But to warrant a removal, the judgment must be entered upon the minutes, assigning therein the causes of removal.

Appeal how taken; effect of.

SEC. 79. From a judgment of removal, an appeal may be taken to the supreme court in the same manner as from a judgment in a civil action, but until such judgment be reversed, the defendant shall be suspended from his office. Pending the appeal the office may be filled as in case of vacancy.

When district attorney impeached, proceedings on.

SEC. 80. The same proceedings may be had on like grounds for the removal of a district attorney, except that the accusation shall be delivered to the district judge of the district, who shall thereupon appoint some one to act as prosecuting officer in the matter, or shall place the accusation in the hands of the district attorney of an adjoining district, and require him to conduct the proceedings.

CHAPTER IV.

Proceedings in Criminal Actions Prosecuted by Indictment.

SECTION 81. Who liable to punishment by indictment.
82. Offense commenced out of and consummated within the Territory.
83. Jurisdiction in case of duel fought out of the Territory.
84. Jurisdiction when offense part in one and part in another county.
85. When committed on or near county boundary.
86. When on board vessels or boat.
87. Jurisdiction in cases of abduction, kidnapping, etc.
88. In cases of bigamy or incest.
89. In cases of property stolen in one county, and taken into another.
90. In case of accessory.
91. Conviction or acquittal in another State or Territory, a bar.
92. Same, when within another county.

Who liable to punishment by indictment.

SEC. 81. Every person, whether an inhabitant of this Territory or any other State or country, or of a Territory or District of the United States, shall be liable to punishment by the laws of this Territory for a public offense committed by him therein, except when it is by law cognizable exclusively in the court of the United States .

Offense commenced out of and consummated within the Territory.

SEC. 82. When the commission of a public offense commenced without this Territory, is consummated within the boundaries thereof, the defendant shall be liable to punishment therefor in this Territory, though he was out of the Territory at the time of the commission of the offense charged; *provided*, That he consummated the offense through the intervention of an innocent or guilty agent within this Territory, or any other means proceeding directly from himself, and in such case the jurisdiction shall be in the county in which the offense is consummated.

Jurisdiction in case of duel fought out of Territory.

SEC. 83. When an inhabitant or resident of this Territory shall, by any previous appointment or engagement, fight a duel without the jurisdiction of this Territory, and in such duel a wound shall be inflicted upon any person whereof he shall die within this Territory, the jurisdiction of the offense shall be in the county where the death shall happen.

Jurisdiction when offense part in one and part in another county.

SEC. 84. When a public offense is committed in part in one county and in part in another, or the acts or effects thereof constituting, or requisite to the consummation of the offense occur in two or more counties, the jurisdiction shall be in either county.

When commited on or near county boundary.

SEC. 85. When a public offense is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction shall be within either county.

When on board vessels or boat.

SEC. 86. When an offense is committed within this Territory on board a vessel navigating a river, bay, slough or lake, or lying therein, in the prosecution of her voyage, the jurisdiction shall be in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage shall terminate.

Jurisdiction in cases of abduction, kidnapping etc.

SEC. 87. The jurisdiction of an indictment for the crime of forcibly stealing, taking or arresting any man, woman or child in this Territory, and carrying him or her into another county, State or Territory; or for forcibly taking or arresting any person or persons whomsoever, with a design to take him or her out of this Territory, without having established a claim according to the laws of the United States; or for hiring, persuading, enticing, decoying or seducing, by false promises, misrepresentations and the like, any negro, mulatto, Indian or colored person to go out of this Territory, or to be taken or removed therefrom, for the purpose and with the intent to sell such negro, mulatto, colored person or Indian into slavery or involuntary servitude, or otherwise to employ him or her for his or her own use, or to the use of another, without the free will and consent of such negro, mulatto, Indian or colored person, shall be in any county in which the offense is committed or into or out of which the person upon whom the offense was committed may in the prosecution of the offense have been brought, or in which an act shall be done by the offender in instigating, procuring, promoting, aiding in or being accessory to the commission of the offense, or in abetting the parties therein concerned.

In cases of bigamy or incest.

SEC. 88. When the offense of bigamy or incest is committed in one county and the defendant is apprehended in another, the jurisdiction shall be in either county.

In cases of property stolen in one county and taken into another.

SEC. 89. When property feloniously taken in one county by burglary, robbery, larceny or embezzlement has been brought into another, the jurisdiction of the offense shall be in either county. But if, at any time before the conviction of the defendant in the latter, he be indicted in the former county, the sheriff of the latter county shall, upon demand, deliver him to the sheriff of the former county, upon being served with a copy of the indictment, and upon receipt, endorsed thereon by the sheriff of the former county; and shall, on filing the copy of the indictment and receipt, be exonerated from all liability in respect to the custody of the offender.

In case of accessory.

SEC. 90. In the case of an accessory before or after the fact in the commission of a public offense, the jurisdiction shall be in the county where the offense of the accessory was committed, notwithstanding the principal offense was committed in another county.

Conviction or acquittal in another State or Territory, a bar.

SEC. 91. When an act charged as a public offense is within the jurisdiction of another State or Territory, as well as of this Territory, a conviction or acquittal thereof in such Territory or State shall be a bar to the prosecution or indictment therefor in this Territory.

Same, when within another county.

SEC. 92. When an offense is within the jurisdiction of two or more counties, a conviction or acquittal thereof in one county shall be a bar to a prosecution or indictment therefor in another.

CHAPTER V.

Time of Commencing Criminal Actions.

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94. Felony, three years.
95. Misdemeanor, one year.
96. Absence of defendant not to be computed.
97. Indictment, when deemed found.
98. Offenses committed before the passage of this act.

SEC. 93. There shall be no limitation of the time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed. **Murder, no limit to prosecution**

SEC. 94. An indictment for any felony other than murder must be found within three years after its commission. **Felony, three years.**

SEC. 95. An indictment for any misdemeanor must be found within one year after its commission. **Misdemeanor, one year.**

SEC. 96. If when the offense is committed the defendant be out of the Territory, the indictment may be found within the term herein limited after his coming within the Territory, and no time during which the defendant is not an inhabitant of, or usually resident within the Territory shall be a part of the limitation. **Absence of defendant not to be computed.**

SEC. 97. An indictment is found within the meaning of this act when it is duly presented by the grand jury in open court, and there received and filed. **Indictment, when deemed found.**

SEC. 98. In offenses committed before the passage of this act, the indictments may be found at any time within the limitation hereinabove provided, and the time of limitation shall commence after the passage of this act. **Offenses committed before the passage of this act.**

CHAPTER VI.

Complaint and Proceedings thereon, to the Commitment, inclusive.

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SECTION 164. Magistrate to make and deliver commitment, etc.
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167. Same.
168. Same.
169. Magistrate may commit witness, when.
170. Witness unable to give security, may be examined, how.
171. When last section not to apply.
172. Magistrate to transmit papers, etc.

Complaint, what is. SEC. 99. The complaint is the allegation made to a magistrate that a person has been guilty of some public offense.

Magistrate, who is. SEC. 100. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense.

Same. SEC. 101. The following persons are magistrates:

First—The justices of the Supreme Court.

Second—The probate judges.

Third—Justices of the peace, and others upon whom are conferred by law the powers of justices of the peace.

Magistrate to examine complainant on oath. SEC. 102. When a complaint is laid before a magistrate of the commission of a public offense, triable within the county, he must examine, on oath, the complainant or prosecutor, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

Deposition, what to contain. SEC. 103. The deposition must set forth the facts stated by the prosecutor and his witnesses, tending to establish the commission of the offense and the guilt of the defendant.

Magistrate to issue warrant. SEC. 104. If the magistrate be satisfied therefrom that the offense complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, he shall issue a warrant of arrest.

Warrant of arrest, what is; form of. SEC. 105. A warrant of arrest is an order in writing in the name of the people of the United States in the Territory of Idaho, signed by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form:

TERRITORY OF IDAHO, }
County of ——— }

The People of the United States in the Territory of Idaho to any Sheriff Constable, or Marshal, or Policeman in this Territory, or in the County of ———

A COMPLAINT, upon oath, has been this day laid before me by A. B., that the crime of [designate it] has been committed, and accusing C. D. thereof:

You are therefore commanded, Forthwith to arrest the above named C. D., and bring him before me at [naming the place]; or, in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

DATED at ——— this ——— day of ———, 18—

What warrant must specify.

SEC. 106. The warrant must specify the name of the defendant. If it be unknown to the magistrate, the defendant may be designated therein by any name. It must also state the time of issuing it, and the county, city or town where it was issued, and be signed by the magistrate, with his name of office.

To whom directed.

SEC. 107. The warrant must be directed to and executed by a peace officer.

Peace officers, who are

SEC. 108. Peace officers are sheriffs of counties, and constables, marshals, and policemen of cities and towns respectively.

Warrant, to whom directed

SEC. 109. If a warrant be issued by a justice of the Supreme Court or probate judge, it may be directed generally to any sheriff, constable, marshal or policeman in this Territory, and may be executed by any of those officers to whom it may be delivered.

When executed in another county, how endorsed.

SEC. 110. If it be issued by any other magistrate, it may be directed generally to any sheriff, constable, marshal or policeman in the county in which it is issued, and may be executed in that county; or if the defendant be in another county, it may be executed therein, upon the written direction of a magistrate of that county endorsed upon the warrant, signed by him, with his name of office, and dated at the county, city or town where it is made, to the following effect: "This warrant may be executed in the county of ———;" or as the case may be.

On arrest for felony, duty of officer.

SEC. 111. If the offense charged in the warrant be a felony, the officer making the arrest must take the defendant before the magistrate who issued the warrant, or some other magistrate of the same county, as provided in section 115.

For misdemeanor, duty of officer.

SEC. 112. If the offense charged in the warrant be a misdemeanor, and the defendant be arrested in another county, the officer must, upon being so required by the defendant, bring him before a magistrate of such county, who shall admit the defendant to bail.

Bail to be certified on warrant.

SEC. 113. On admitting the defendant to bail, the magistrate shall certify on the warrant the fact of his having done so, and deliver the warrant and recognizance to the officer having charge of the defendant. The officer shall forthwith discharge the defendant from arrest, and shall, without delay, deliver the warrant and recognizance to the clerk of the court at which the defendant is required to appear.

Bail, when not given, duty of officer.

SEC. 114. If, on the admission of the defendant to bail, as provided in section 112, or if bail be not forthwith given, the officer shall take the defendant before the magistrate who issued the warrant, or some other magistrate of the same county, as provided in the next section.

When magistrate is unable to act, may be taken before another

SEC. 115. When by the preceding section of this act the defendant is required to be taken before the magistrate who issued the warrant, he may, if the magistrate be absent or unable to act, be taken before the nearest or most accessible magistrate in the same county. The officer shall at the same time deliver to the magistrate the warrant, with his return endorsed and subscribed by him.

Must be taken without delay.

SEC. 116. The defendant must in all cases be taken before the magistrate without unnecessary delay.

Affidavit to be sent, when.

SEC. 117. If the defendant be brought before a magistrate in the same county other than the one who issued the warrant, the affidavits on which the warrant was granted, if the defendant insist upon an examination, shall be sent to the magistrate, or if they cannot be procured, the prosecutor and his witnesses shall be summoned to give their testimony anew.

When triable in another county, depositions to be delivered to officer.

SEC. 118. When a complaint is laid before the magistrate of the commission of a public offense triable within some other county of this Territory, but showing that the defendant is in the county where the complaint is laid, the same proceedings shall be had as prescribed in this act, except that the warrant shall require the defendant to be taken before the nearest or most accessible magistrate of the county in which the offense is triable, and the depositions of the complainant or prosecutor and of the witnesses who may have been produced shall be delivered by the magistrate to the officer to whom the warrant is delivered.

Officers to deliver depositions.

SEC. 119. The officer who executes the warrant shall take the defendant before the nearest or most accessible magistrate of the county in which the offense is triable, and shall deliver to such magistrate the depositions and the warrant, with his return endorsed thereon; and such magistrate shall proceed in the same manner as upon a warrant issued by himself.

Magistrate to transmit depositions when.

SEC. 120. If the offense charged in the warrant, issued pursuant to section 118, be a misdemeanor, the officer shall, upon being so required by the defendant, take him before a magistrate of the county in which the said warrant is issued, who shall admit the defendant to bail, and immediately transmit the warrant, depositions and recognizance to the clerk of the court in which the defendant is required to appear.

Arrest, what is.

SEC. 121. Arrest is the taking of a person into custody, that he may be held to answer for a public offense.

Arrest, by whom made

SEC. 122. An arrest may be either:

First—By a peace officer, under a warrant.

Second—By a peace officer, without a warrant; or,

Third—By a private person.

Officer may require aid.

SEC. 123. Every person shall aid an officer in the execution of a warrant, if the officer require his aid, and be present and acting in its execution.

Arrest, time when may be made.

SEC. 124. If the offense charged be a felony, the arrest may be made on any day and at any time of the day or night. If it be a misdemeanor, the arrest shall not be made at night, unless upon the direction of the magistrate endorsed upon the warrant.

How made.

SEC. 125. An arrest shall be made by an actual restraint of the person of the defendant, or by his submission to the custody of the officers.

Defendant not to be subject to unnecessary restraint.

SEC. 126. The defendant shall not be subjected to any more restraint than is necessary for his arrest and detention.

Officer to show authority.

SEC. 127. The officer shall inform the defendant that he acts under the authority of the warrant, and shall also show the warrant, if required.

Power, if resisted.

SEC. 128. If, after notice of intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

Officer may break in, when.

SEC. 129. The officer may break open any outer or inner door or window of a dwelling-house to execute the warrant, if, after notice of his authority and purpose, he be refused admittance.

Same.

SEC. 130. An officer may break open any outer or inner door or window of a dwelling-house for the purpose of liberating a person who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his own liberation.

Arrest without warrant when may be made.

SEC. 131. A peace officer may, without a warrant, arrest a person:

First—For a public offense committed or attempted in his presence.

Second—Where the person arrested has committed a felony, although not in his presence.

Third—When a felony has in fact been committed, and he has reasonable cause for holding the person arrested to have committed it.

Fourth—On a charge made upon a reasonable cause of the commission of a felony by the party arrested.

SEC. 132. To make an arrest, as provided in the last section, the officer may break open an outer or inner door or window of a dwelling-house, if, after notice of his office and purpose, he be refused admittance.

Officer may break in, etc.

SEC. 133. He may also at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony, and is justified in making the arrest, though it afterward appear that a felony had not been committed.

May arrest at night, when.

SEC. 134. When arresting a person without a warrant, the officer must inform him of his authority and the cause of his arrest, except when he is in the actual commission of a public offense, or when he is pursued immediately after an escape.

When officer must exhibit his authority; when he need not.

SEC. 135. He may take before a magistrate any person who, being engaged in a breach of the peace, is arrested by a bystander and delivered to him.

Officer's duty when arrest made by a bystander.

SEC. 136. When a public offense is committed in the presence of a magistrate, he may, by a verbal order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before him on a warrant of arrest.

When committed in presence of magistrate.

SEC. 137. A private person may arrest another:

When private person may make arrest.

First—For a public offense committed or attempted in his presence.

Second—When the person arrested has committed a felony, although not in his presence.

Third—When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

SEC. 138. He must, before making the arrest, inform the person to be arrested of the cause thereof, and require him to submit, except when he is in the actual commission of the offense, or when he is arrested on pursuit immediately after its commission.

Must state the cause.

SEC. 139. If the person to be arrested has committed a felony, and a private person, after notice of his intention to make the arrest, be refused admittance, he may break open any outer or inner door or window of a dwelling-house for the purpose of making the arrest.

May force entrance, etc.

SEC. 140. A private person who has arrested another for the commission of a public offense, must, without unnecessary delay, take him before a magistrate or deliver him to a peace officer.

Must take before magistrate at once.

SEC. 141. If a person arrested escape or be rescued, he person from whose custody he escaped or was rescued may immediately pursue and retake him at any time and in any place within the Territory.

May force entrance. Escape and recapture.

SEC. 142. To retake the person escaped or rescued, the person pursuing may, after notice of his intention and refusal of admittance, break open any outer or inner door or window of a dwelling-house.

Proceedings when defendant is brought before magistrate.

SEC. 143. When the defendant is brought before the magistrate upon an arrest, either with or without warrant, on a charge of having committed a public offense, the magistrate shall immediately inform him of the charge against him and of his right to the aid of counsel in every stage of the proceedings and before any further proceedings are had.

Time to procure counsel.

SEC. 144. He shall also allow the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose; and shall, upon the request of the defendant, require a peace officer to take a message to such counsel within the township or city as the defendant may name. The officer shall, without delay and without fee, perform that duty.

Examination.

SEC. 145. The magistrate shall, immediately after the appearance of counsel, or if the defendant require the aid of counsel after waiting a reasonable time therefor, proceed to examine the case.

Adjournment.

SEC. 146. The examination must be completed at one session, unless the magistrate, for good cause shown, adjourn it. The adjournment cannot be for more than two days at each time, nor more than six days in all, unless by consent or on motion of the defendant.

Same; admission to bail or commitment.

SEC. 147. If an adjournment be had for any cause, the magistrate shall commit the defendant for examination, admit him to bail, or discharge him from custody upon the deposit of money, as provided in this act, as security for his appearance at the time to which the examination is adjourned.

Commitment, form of.

SEC. 148. The commitment for examination shall be by an endorsement, signed by the magistrate, on the warrant of arrest to the following effect: "The within-named A. B., having been brought before me under this warrant, is committed for examination to the sheriff of the county of ———". If the sheriff be not present, the defendant may be committed to the custody of a peace officer.

Magistrate must read deposition to defendant; must issue subpœnas.

SEC. 149. At the examination the magistrate shall, in the first place, read to the defendant the depositions of the witnesses examined on the taking of the information. He shall issue subpœnas for any witnesses required by the prosecutor or the defendant, as provided in section 535.

Witnesses, how examined.

SEC. 150. The witnesses shall be examined in the presence of the defendant, and may be cross-examined in his behalf.

Defendant may make statement, etc.

SEC. 151. When the examination of witnesses on the part of the people is closed, the magistrate shall distinctly inform the defendant that it is his right to make a statement in relation to the charge against him (stating to him the nature thereof); that the statement is designed to enable him, if he see fit, to answer the charge and to explain the facts alleged against him; that he is at liberty to waive making a statement, and that his waiver cannot be used against him on the trial.

May waive it; waiver not to be used against him

SEC. 152. If the defendant waive his right to make a statement, the magistrate shall make a note thereof immediately following the depositions of the witnesses against the defendant, but the fact of his waiver shall not be used against the defendant on the trial.

Statement must be reduced to writing.

SEC. 153. If the defendant choose to make a statement, the magistrate shall proceed to take the same in writing, without oath, and shall put to the defendant the following questions only: What is your name and age? Where were you born? Where do you reside, and how long have you resided there? What is your business or profession? Give any explanation you may think proper of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation.

Defendant may correct statement.

SEC. 154. The answer of the defendant to each of the questions must be distinctly read to him as it is taken down. He may thereupon correct or add to his answer, and it shall be corrected until it is made conformable to what he declares to be the truth.

Statement, requisites of

SEC. 155. The statement must be reduced to writing by the magistrate, or under his direction, and authenticated in the following form:

First—It must set forth in detail that the defendant was informed of his rights, as provided by section 151, and that, after being so informed, he made the statement.

Second—It must contain the questions put to him, and his answers thereto, as provided in sections 153 and 154.

Third—It may be be signed by the defendant, or he may refuse to sign it; but if he refuse to sign it, his reason therefor must be stated as he gives it.

Fourth—It must be signed and certified by the magistrate.

Defendant's witnesses, order of introducing.

SEC. 156. After the waiver of the defendant to make a statement, or after he has made it, his witnesses, if he produce any, shall be sworn and examined.

Witnesses may be separated, when.

SEC. 157. The witnesses produced on the part either of the people or of the defendant shall not be present at the examination of the defendant; and while a witness is under examination, the magistrate may exclude all witnesses who have not been examined. He may also cause the witnesses to be kept separate and to be prevented from conversing with each other until they are all examined.

What persons may be excluded.

SEC. 158. The magistrate shall also, upon the request of the defendant, exclude from the examination every person except his clerk, the prosecutor and his counsel, the district attorney of the county, the defendant and his counsel, and the officer having the defendant in custody.

When defendant may be discharged; form of.

SEC. 159. After hearing the proofs and the statement of the defendant, if he have made one, if it appear either that a public offense has not been committed or there is no sufficient cause to believe the defendant guilty thereof, the magistrate shall order the defendant to be discharged, by an endorsement on the depositions and statement, signed by him, to the following effect: "There being no sufficient cause to believe the within named A. B. guilty of the offense within mentioned, I order him to be discharged."

When defendant may be held to answer; form of.

SEC. 160. If, however, it appears from the examination that a public offense has been committed, and that there is sufficient cause to believe the defendant guilty thereof, the magistrate shall, in like manner, endorse on the depositions and statement an order, signed by him, to the following effect: "It appearing to me, by the within depositions and statement [if any], that the offense therein mentioned [or any other offense, according to the fact, stating generally the nature thereof] has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer the same."

Defendant to be committed, when.

SEC. 161. If the offense be not bailable, the following words, or words to the same effect, shall be added to the endorsement: "And that he be committed to the sheriff of the county of ———"

When to be admitted to bail; form of.

SEC. 162. If the offense be bailable, and bail be taken by the magistrate, the following words, or words to the same effect, shall be added to the endorsement; "And I have admitted him to bail to answer by the recognizance hereto annexed."

When to be committed until bail be given.

Sec. 163. If the offense be bailable, and the defendant be admitted to bail, but bail have not been taken, the following words, or words to the same effect, shall be added to the endorsement mentioned in section 160: "And that he be admitted to bail in the sum of ——— dollars, and be committed to the sheriff of the county of ——— until he give such bail."

Magistrate to make and deliver commitment, etc.

Sec. 164. If the magistrate order the defendant to be committed as provided in sections 161 and 163, he shall make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed (or, if that officer be not present, to a peace officer), who shall deliver the defendant into the proper custody, together with the commitment.

Form of.

Sec. 165. The commitment must be to the following effect:

THE TERRITORY OF IDAHO, }
County of ——— }
(*As the case may be.*)

The People of the United States in the Territory of Idaho to the Sheriff of the County of ———

An Order having been this day made by me that A. B be held to answer upon a charge of [stating briefly the nature of the offense, and, as near as may be, the time when and the place where the same was committed];

You are commanded, To receive him into your custody, and to detain him until he is legally discharged.

Dated at ——— this ——— day of ———, 18——

Magistrate must take recognizance of witnesses.

Sec. 166. On holding the defendant to answer, the magistrate shall take from each of the material witnesses examined before him on the part of the people a written recognizance to the effect that he will appear and testify at the court to which the depositions and statements are to be sent, or that he will forfeit the sum of five hundred dollars.

Same.

Sec. 167. Whenever the magistrate shall be satisfied, by proof on oath, that there is reason to believe that any such witness will not fulfill his recognizance to appear and testify, unless security be required, he may order the witness to enter into a written recognizance, with such sureties and in such sum as he may deem meet, for his appearance, as specified in the last section.

Same.

Sec. 168. Infants and married women who are material witnesses against the defendant, may in like manner be required to procure sureties for their appearance, as provided in the last section.

Magistrate may commit witness, when. SEC. 169. If a witness required to enter into a recognizance to appear and testify, either with or without sureties, refuse compliance with the order for that purpose, the magistrate shall commit him to prison until he comply or be legally discharged.

Witness unable to give security, may be examined, how. SEC. 170. When, however, it shall satisfactorily appear by the examination, on oath, of the witness, or any other person, that the witness is unable to procure sureties, he may be forthwith conditionally examined on behalf of the people. Such examination shall be by question and answer, and shall be conducted in the same manner as the examination before a committing magistrate is required by this act to be conducted; and the witness shall thereupon be discharged.

When last section not to apply. SEC. 171. The last section shall not apply to the prosecutor, or to an accomplice in the commission of the offense charged.

Magistrate to transmit papers, etc. SEC. 172. When a magistrate has discharged a defendant, or has held him to answer, as provided in sections 160 and 161, he shall return, without delay, to the clerk of the court at which the defendant is required to appear, the warrant, if any, the depositions, the statement of the defendant, if he has made one, and all recognizances of bail, or for the appearance of witnesses taken by him.

CHAPTER VII.

Proceedings After Commitment and Before Indictment.

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Offenses to be prosecuted by indictment. SEC. 173. All public offenses triable in the district court must be prosecuted by indictment, except as provided in the next section.

Proceedings for removal of officers. SEC. 174. When the proceedings are had for the removal of district, county or township officers, they may be commenced by an accusation in writing, as provided in sections sixty-seven and eighty.

Must be found in district court. SEC. 175. All accusations against district, county and township officers, and all indictments, must be found in the district court.

Grand juries, how formed. SEC. 176. The formation of grand juries is prescribed by special statutes.

Challenges to, how taken. SEC. 177. A challenge may be taken to the panel of the grand jury, or to any individual grand juror, in the cases hereinafter prescribed by the people or by the defendant.

Causes for challenge to the panel.

SEC. 178. A challenge to the panel may be interposed for one or more of the following causes:

First—That the requisite number of ballots was not drawn from the jury-box of the county as prescribed by law.

Second—That the notice of the drawing of the grand jury was not given as prescribed by law.

Third—That the drawing was not had in the presence of the officers designated by law.

Causes for challenge to individual jurors.

SEC. 179. A challenge to an individual grand juror may be interposed for one or more of the following causes only:

First—That he is a minor.

Second—That he is an alien.

Third—That he is insane.

Fourth—That he is the prosecutor upon a charge against the defendant.

Fifth—That he is a witness on the part of the prosecution, and has been served with process or bound by an undertaking as such.

Sixth—That he has formed or expressed a decided opinion that the defendant is guilty of the offense for which he is held to answer.

Seventh—That he is not a resident of the district or county in which the court is held.

May be oral; how tried.

SEC. 180. The challenges mentioned in the last three sections may be oral, and shall be entered upon the minutes, and tried by the court in the same manner as challenges in the case of a trial jury which are triable by the court.

Decision of.

SEC. 181. The court shall allow or disallow the challenge, and the clerk shall enter its decisions in the minutes.

Effect of allowance of challenge to panel.

SEC. 182. If a challenge to the panel be allowed, the grand jury are prohibited from inquiring into the charge against the defendant by whom the challenge was interposed. If they should, notwithstanding, do so, and find an indictment against him, the court shall direct the indictment to be set aside.

Effect of allowance of

SEC. 183. If a challenge to an individual grand juror be allowed, he shall not be present at or take part in the consideration of the charge against the defendant who interposed the challenge or the deliberations of the grand jury thereon.

SEC. 184. The grand jury shall inform the court of a violation of the last section, and it shall be punished by the court as a contempt. **Violation of, contempt.**

SEC. 185. A person held to answer to a charge for a public offense can take advantage of any objection to the panel or to an individual grand juror in no other mode than that by challenge, as prescribed in the preceding section. **Objection can only be taken by challenge.**

SEC. 186. From the persons summoned to serve as grand jurors, and appearing, the court shall appoint a foreman. The court shall also appoint a foreman when the person already appointed is discharged or excused before the grand jury is dismissed. **Foreman may be appointed.**

SEC. 187. The following oath shall be administered to the foreman of the grand jury: **Oath to foreman; form of.**

> You, as foreman of the grand jury, shall diligently inquire into, and true presentment make, of all public offenses against the people of the United States in the Territory of Idaho committed or triable within the jurisdiction of this court of which you shall have or can obtain legal evidence. You shall present no person through malice, hatred or ill-will, nor have any unpresented through fear, favor or affection, or for any reward, or the promise or hope thereof; but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understandstanding, so help you God.

SEC. 188. The following oath shall be immediately thereupon administered to the other grand jurors present: **Oath to other grand jurors; form of.**

> The same oath which your foreman has now taken before you on his part, you, and each of you, shall well and truly observe on your part, so help you God.

SEC. 189. The grand jury being empaneled and sworn, shall be charged by the court. In doing so, the court shall give them such information as it may deem proper as to the nature of their duties, and any charges for public offenses returned to the court or likely to come before the grand jury. The court need not, however, charge them respecting violations of any particular statute. **Court may charge grand jury; nature of.**

SEC. 190. The grand jury shall then retire to a private room, and inquire into the offenses cognizable by them. **Grand jury to retire.**

SEC. 191. The grand jury, on completion of the business before them, shall be discharged by the court; but whether the business be completed or not, they shall be discharged by the final adjournment of the court. **Grand jury discharged, when.**

New grand jury may be summoned, when.

SEC. 192. If an offense be committed during the sitting of the court, after the discharge of the grand jury, the court may, in its discretion, direct an order to be entered that the sheriff summon another grand jury.

How summoned.

SEC. 193. An order shall thereupon be made out by the clerk, and directed to the sheriff, requiring him to summon twenty-four persons, qualified to serve as grand jurors, to appear forthwith, or at such time as may be named by the court.

Sheriff to return list.

SEC. 194. The sheriff shall execute the order, and return it with a list of the names of the persons summoned.

Grand jury, how drawn.

SEC. 195. At the time appointed the list shall be called over, and the names of those in attendance be written by the clerk on separate ballots and put into a box, from which a grand jury shall be drawn.

Manner of forming grand jury prior to assessment-roll being made.

SEC. 196. For the first and for all subsequent terms of the district court, until an assessment-roll in each county be made out and returned, so that a jury-list may be formed and a jury drawn as required by law, the grand jury and the trial jury shall be formed in the following manner:

Court to direct sheriff to summon 36 persons.

SEC. 197. On or before the first day of the term, the judge shall, by an order, to be entered on the minutes, direct the sheriff of the county to summon thirty-six persons from the citizens of the county to appear forthwith, or at such time as may be named in said order.

Duty of sheriff.

SEC. 198. The clerk shall issue the summons, and the sheriff shall execute and return it at the time specified, with a list of the names of the persons so summoned. If he has been unable to summon the whole number in the time allowed, he shall return the summons with the list of names summoned.

Power of the court.

SEC. 199. The court may, in its discretion, enlarge the time of the return, and direct the sheriff to summon the whole number, or may proceed to empanel a grand jury from the number summoned.

Empaneling grand and petit jurors, method of.

SEC. 200. Upon the return of the summons, or upon the expiration of the further time allowed, the names of the persons summoned shall be called, and the court shall proceed to empanel a grand jury and a trial jury in like manner as if such persons had been empaneled upon a regular drawing of a jury.

Grand jury, powers and duty of.

SEC. 201. The grand jury has the power, and it is their duty, to inquire into all public offenses committed or triable within the jurisdiction of the court, and to present them to the court either by presentment or indictment.

Indictment, what is.

SEC. 202. An indictment is an accusation in writing presented by the grand jury to a competent court, charging a person with a public offense.

Presentment, what is.

SEC. 203. A presentment is an informal statement in writing by the grand jury, representing to the court that a public offense has been committed, which is triable within the county, and that there is reasonable grounds for believing that a particular individual (named or described) has committed it.

Foreman to administer oaths.

SEC. 204. The foreman may administer an oath to any witness appearing before the grand jury.

What evidence jury to receive.

SEC. 205. In the investigation of a charge for the purpose of either presentment or indictment, the grand jury shall receive no other evidence than such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence, or the deposition of witnesses taken as provided in this act.

None but legal evidence.

SEC. 206. The grand jury shall receive none but legal evidence and the best evidence in degree, to the exclusion of hearsay or secondary evidence.

Not to receive evidence for defendant; may order evidence to be produced

SEC. 207. The grand jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses.

When jury ought to find indictment.

SEC. 208. The grand jury ought to find an indictment when all the evidence before them, taken together, is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the trial jury.

Duty of juror who knows offense to have been committed.

SEC. 209. If a member of the grand jury knows, or has reason to believe, that a public offense has been committed which is triable within the jurisdiction of the court, he must declare the same to his fellow-jurors, who shall thereupon investigate the same.

What grand jury must inquire into.

SEC. 210. The grand jury must inquire into the case of every person imprisoned in the jail of the county on a criminal charge and not indicted; into the condition and management of the public prisons within the county, and into the wilful and corrupt misconduct in office of public officers of every description within the county.

Entitled to access to prisons, records, etc.

SEC. 211. They are also entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records within the county.

May ask advice of court Duties and privileges of district attorney. Persons to be excluded

SEC. 212. The grand jury may, at all reasonable times, ask the advice of the court and of the district attorney. Unless his advice be asked, no member of the court shall be permitted to be present during the session of the grand jury. The district attorney shall be allowed, at all times, to appear before the grand jury, on his request, for the purpose of giving information or advice relative to any matter cognizable by them, and may interrogate witnesses before them when they shall deem it necessary. Except the district attorney, no person shall be permitted to be present before the grand jury besides the witnesses actually under examination; and no person shall be permitted to be present during the expression of their opinions or the giving of their votes upon any matter before them.

Secrecy of proceedings.

SEC. 213. Every member of the grand jury shall keep secret whatever he himself or any other grand juror may have said, or in what manner he or any other grand juror may have voted on a matter before them.

When may be required to disclose secrets.

SEC. 214. A member of the grand jury may, however, be required by the court to disclose the testimony of a witness examined before the grand jury for the purpose of ascertaining whether it is inconsistent with that given by the witness before the court, or to disclose the testimony given before them by any person upon a charge against him for perjury in giving his testimony, or upon his trial therefor.

Not to be questioned, etc.

SEC. 215. No grand juror shall be questioned for anything he may say, or any vote he may give in the grand jury relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty in making an accusation or giving testimony to his fellow-jurors.

Presentment, number necessary to.

SEC. 216. A presentment cannot be found without the concurrence of at least twelve grand jurors. When so found, it must be signed by the foreman.

Presentment, how presented.

SEC. 217. The presentment, when found, must be presented by the foreman, in the presence of the grand jury, to the court, and shall be filed by the clerk.

Officers not to disclose fact of presentment, except, etc.

SEC. 218. No grand juror, district attorney, clerk, judge or other officer shall disclose the fact of a presentment having been made for a felony until the defendant shall have been arrested. But this prohibition shall not extend to disclosure by the issuing or in the execution of a warrant to arrest the defendant.

Violation of last section a contempt.

SEC. 219. A violation of the provisions of the last section shall be punishable as a contempt.

SEC. 220. If the court deem that the facts stated in the presentment constitute a public offense, triable within the county, it shall direct the clerk to issue a bench warrant for the arrest of the defendant. Bench warrant, when to issue.

SEC. 221. The clerk, on the application of the district attorney, may accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant, under his signature and the seal of the court, into one or more counties. When and where to issue and be directed.

SEC. 222. The bench warrant, upon presentment, shall be substantially in the following form: Form of.

TERRITORY OF IDAHO, }
County of ——— }

The People of the United States in the Territory of Idaho to any Sheriff Constable, Marshal, or Policeman in this Territory:

A PRESENTMENT having been made on the ——— day of ——— 18— to the district court of the district of ——— charging C. D. with the crime of ——— [designating it generally]:

You are therefore commanded, Forthwith to arrest the above named C. D., and take him before E. F., a magistrate of this county; or, in case of his absence or inability to act, before the nearest or most accessible magistrate in this county.

{ SEAL. }

GIVEN under my hand, with the seal of the said Court affixed, this ——— day of ——— A. D. 18——

By order of the Court,
G. H., *Clerk.*

SEC. 223. The bench warrant may be served in any county, and the officer serving it shall proceed thereon in all respects as upon a warrant of arrest on a complaint, except that when served in another county it need not be endorsed by a magistrate of that county. How served.

SEC. 224. The magistrate, when the defendant is brought before him, shall proceed to examine the charge contained in the presentment, and hold the defendant to answer the same, or discharge him therefrom, in the same manner in all respects as upon a warrant of arrest on complaint. Proceedings before magistrate before whom defendant is brought.

CHAPTER VIII.

The Indictment.

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Indictment, number necessary to; endorsement.

SEC. 225. An indictment can not be found without the concurrence of at least twelve grand jurors; when so found, it shall be endorsed "a true bill," and the endorsement shall be signed by the foreman of the grand jury.

Proceedings when grand jury fail to concur.

SEC. 226. If twelve grand jurors do not concur in finding an indictment against a defendant who has been held to answer; the deposition and statement, if any, transmitted to them, shall be returned to the court, with an endorsement thereon, signed by the foreman, to the effect that the charge is dismissed.

Effect of dismissal of charge.

SEC. 227. The dismissal of the charge shall not, however, permit the same charge from being again submitted to a grand jury, or as often as the court shall so direct. But without such direction, it shall not be again submitted.

Names of witnesses to be inserted &c.

SEC. 228. When an indictment is found, the names of the witnesses examined before the grand jury shall be inserted at the foot of the indictment, or endorsed thereon before it is presented to the court.

Indictment, how presented and filed.

SEC. 229. An indictment, when found by the grand jury, shall be presented by their foreman, in their presence, to the court, and shall be filed with the clerk, and remain in his office as a public record.

Proceedings when defendant not in custody.

SEC. 230. When an indictment has been found against a defendant not in custody, the same proceedings shall be had as are prescribed in section two hundred and fifty-seven and two hundred and sixty-four, both inclusive, against a defendant who fails to appear for arraignment.

Forms and rules of pleading.

SEC. 231 All the forms of pleading in criminal actions, and the rules by which the sufficiency of pleadings is to be determined, shall be those which are prescribed by this act.

First pleading,

SEC. 232. The first pleading on the part of the people is the indictment.

Indictment what to contain.

SEC. 233. The indictment shall contain the title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties; a statement of the acts constituting the offense, in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended.

SEC. 234. It may be substantially in the following form: Form of.

The people of the United States, in the Territory of Idaho, against A. B., in the District Court of the—— Judicial District, in the County of———, ——— term A. D., 18——. A. B. is accused by the Grand Jury of the County of———, by this indictment, of the crime of (giving its legal appellation, such as murder, arson, manslaughter, or the like, or designating it as felony or misdemeanor,) committed as follows:

The said A. B., on the—— day of———, A. D., 18——, at the county of———, (stating the act or omission constituting the offense, in the manner prescribed in this act, according to the forms mentioned in the next section, where they are applicable.)

SEC. 235. The indictment must be direct and certain as it regards: Must be direct and certain

First—The party charged.

Second—The offense charged, when necessary to constitute a complete offense.

SEC. 236. When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceeding his true name is discovered, it shall be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment. Defendant idicted by fictitious name.

SEC. 237. The indictment shall charge but one offense, but it may set forth that offense in different forms under different counts. Must charge but one offense &c.

SEC. 238. The precise time at which it was committed need not be stated in the indictment, but it may be alledged to have been committed at any time before the finding of the same, except when the time is a material ingredient of the offense. Time immaterial except &c.

SEC. 239. When an offense involves the commission or an attempt to commit private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured or intended to be injured shall not be deemed material. Statement as to the person injured or intended to be.

SEC. 240. The words used in an indictment shall be construed in the usual acceptance in the common language, except such words and phrases as are defined by law, which are to be construed according to their legal meaning. Construction of words and phrases.

SEC. 241. Words used in a statute to define a public offense, need not be strictly pursued in the indictment, but other words conveying the same meaning may be used. Same

SEC. 242. The indictment shall be sufficient if it can be understood therefrom; Indictment when sufficient.

First—That it is entitled in a court having authority to receive it, though the name of the court be not accurately set forth.

Second—That it was found by a grand jury of the county in which the court was held.

Third—That the defendant is named, or if his name cannot be discovered, that he be described by a fictitious name, with a statement that he has refused to disclose his real name.

Fourth—That the offense was comitted at some place within the jurisdiction of the court.

Fifth—That the offense was committed at some time prior to the time of finding the indictment.

Sixth—That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.

Seventh—That the act or omission charged as the offense is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction according to the right of the case.

Matters of form, when not deemed insufficient.

SEC. 243. No indictment shall be deemed insufficient, nor shall the trial, judgment, or other proceedings thereon, be affected by reason of any defect or imperfection in matters of form which shall not tend to the prejudice of the defendant.

Matters of judicial notice need not be stated.

SEC. 244. Neither presumption of law, nor matters of which judicial notice is taken, need be stated in the indictment.

Judgment, etc., how pleaded.

SEC. 245. In pleading a judgment or other determination of, or proceeding before a court or officer of special jurisdiction, the facts conferring jurisdiction need not be stated, but it may be stated that the judgment or determination was duly made, or the proceeding duly had before such court or officer. The facts constituting the jurisdiction, however, must be established on the trial.

Private statutes how pleaded.

SEC. 246. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to the statute by its title and the day of its passage, and the court shall, thereupon take judicial notice thereof.

In libel, how pleaded.

SEC. 247. An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment is founded, but it shall be sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on the trial.

In forgery, where instrument lost &c., pleading.

SEC. 248. When an instrument which is the subject of an indictment for forgery has been destroyed or withheld by the act or procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment, and established on the trial, the misdescription of the instrument shall be deemed immaterial.

In perjury, pleading.

SEC. 249. In an indictment for perjury, or subornation of perjury, it shall be sufficient to set forth the substance of the controversy, or matter in respect to which the offense was committed, and in what court or before whom the oath alleged to be false, was taken, and that the court or person before whom it was taken had authority to administer the same, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record or proceedings with which the oath is connected, nor the commission, or the authority of the court or person before whom the perjury was committed.

Indictment against several.

SEC. 250. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

Distinction between accessory and principal abolished.

SEC. 251. No distinction shall exist between an accessory before the fact and a principal, or between principals in the first and second degree, in cases of felony; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid or abet in its commisssion, though not present, shall hereafter be indicted, tried, and punished as principals.

Accessory after the fact, when may be punished.

SEC. 252. An accessory after the fact to the commission of a felony, may be indicted and punished, though the principal may be neither tried nor indicted.

Compounding offense; punishment of.

SEC. 253. A person may be indicted for having, with the knowledge of the commission of a public offense, taken money or property of another, or a gratuity. or a reward, or an engagement, or understanding, express or implied, to compound or conceal the offense, or abstain from the prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offense has not been indicted or tried.

Defendant to be arraigned, when.

SEC. 254. When the indictment is filed, the defendant must be arraigned thereon before the court in which it is found, except in the cases mentioned in sections two hundred and seventy-five and two hundred and seventy-six.

Defendant, when to be present, when not.

SEC. 255. If the indictment be for a felony, the defendant must be personally present; but for a misdemeanor his personal appearance is unnecessary, and he may appear upon the arraignment by counsel.

Court to direct defendant to be brought in; when &c.

SEC. 256. When his personal appearance is necessary, if he be in custody, the court may direct the officer in whose custody he is to bring him before it to be arraigned, and the officer shall do so accordingly.

Court may forfeit recognizance and issue bench warrant.

SEC. 257. If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear to be arraigned when his personal attendance is necessary, the court, in addition to the forfeiture of the recognizance or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

Bench warrant, by whom and how issued.

SEC. 258. The clerk on the application of the district attorney, may accordingly at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties.

Form of.

SEC. 259. The bench warrant upon the indictment shall, if the offense be a felony, be substantially in the following form:

THE TERRITORY OF IDAHO, }
County of ——— }

The people of the United States of the Territory of Idaho, to any Sheriff, Constable, Marshal or Policeman in this Territory:

AN INDICTMENT having been found on the—— day of ———, A. D., 18——, in the District Court of the Judicial District of the county of———, charging C. D., with the crime of——(designating it generally;)

You are therefore commanded, Forthwith to arrest the above named C. D., and bring him before the court to answer the indictment; or if the court have adjourned for the term, that you deliver him into the custody of the Sheriff of the county of———.

SEAL.

GIVEN under my hand, with the seal of the Court affiixed, this the—— day of——, A. D. 18——.

By order of the Court,
G. H., *Clerk.*

Defendant to be taken into custody, where punishment is death.

SEC. 260. The defendant, if the offense be punishable with death, when arrested under the warrant, shall be held in custody by the sheriff of the county in which the indictment is found.

Direction on warrant when not; capital.

SEC. 261. If the offense be not capital, the bench warrant shall be in similar form, adding to the body thereof a direction to the following effect: "Or if he require it, that you take him before any magistrate in that county, or in the district in which you arrested him, that he may give bail to answer to the indictment."

SEC. 262. If the offense charged be not capital, the court upon directing the bench warrant to issue, shall fix the the amount of bail, and an endorsement shall be made upon the bench warrant signed by the clerk, to the following effect: "The defendant is to be admitted to bail in the sum of——— dollars."

Amount of bail to be fixed by indorsement on warrant.

SEC. 263. The bench warrant may be served in any county in the same manner as a warrant of arrest, except that when served in another county, it need not be endorsed by a magistrate of the county.

Bench warrant, how served.

SEC. 264. If the defendant be brought before a magistrate of another county for the purpose of giving bail the magistrate shall proceed in all respects thereto in the same manner as if the defendant had been brought before him upon a warrant of arrrest, and the same proceedings may be had thereon as provided in sections one hundred and eleven and one hundred and fourteen, both inclusive.

Proceedings on giving bail in another county.

SEC. 265. When the indictment is for felony and the defendant, before the finding thereof, has given bail for his appearance to answer the charge, the court to which the indictment is presented, may order the defendant to be committed to actual custody, unless he give bail in an increased amount, to be specified in the order.

When for felony, defendant ordered into custody, or to give increased bail.

SEC. 266. If such order be made, and the defendant be present, he shall be forthwith committed accordingly, if he be not present, a bench warrant shall be issued and proceeded upon in the manner provided for in this act.

When present may be committed. when not bench warrant to issue.

SEC. 267. If the defendant appear for arraignment without counsel, he shall be informed by the court that it is his right to have counsel before being arraigned, and shall be asked if he desires the aid of counsel.

Defendant to have counsel.

SEC. 268. The arraignment must be made by the court, or by the clerk or district attorney, under its direction, and consists in reading the indictment to the defendant and delivering to him a copy thereof and of the endorsement thereon, including the list of witnesses endorsed on it, and in asking him whether he pleads guilty or not guilty to the indictment.

Arraignment how made.

SEC. 269. When the defendant is arraigned he shall be informed that if the name by which he is indicted be not his true name, he must then declare his true name or be proceeded against by the name in the indictment.

Proceedings on, when arraigned by other than his true name.

SEC. 270. If he give no other name, the court may proceed accordingly.

If no name be given; proceedure.

SEC. 271. If he alleges that another name is his true name, the court shall direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings

When true name is given, proceedure.

on the indictment may be had against him by that name, referring also, to the name by which he is indicted.

Time allowed to answer.

SEC. 272. If, on the arraignment, the defendant require it, he shall be allowed until the next day, or such further time may be allowed him as the court may deem reasonable, to answer the indictment.

If no time required; when he may plead or demur.

SEC. 273. 'If the defendant do not require time as provided in the last section, or if he do, then on the next day, or at such further day as the court may have allowed him, he may answer to the arraignment, and either move the court to set aside the indictment or may demur or plead thereto.

Grounds for setting aside indictment.

SEC. 274. The indictment shall be set aside by the court in which the defendant is arrainged, and upon his motion, in either of the following cases:

First—When it is not found endorsed, and presented as prescribed in this act.

Second—When the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, are not inserted at the foot of the indictment, or endorsed thereon.

Third—When any person is permitted to be present during the session of the grand jury, while the charge embraced in the indictment is under consideration, except as provided in section two hundred and twelve.

What grounds he may move to set aside on, when he has not been held to answer.

SEC. 275. When the defendant has not been held to answer before the finding of the indictment, he may move to set it aside on any ground which would have been good ground for challenge, either to the panel or any individual grand juror.

Defendant waives objections, when,

SEC. 276. If the motion to set aside the indictment be not made, the defendant shall be precluded from afterwards taking the objections mentioned in the last two sections.

Motion when to be heard.

SEC. 277. The motion shall be heard when it is made unless for good cause the court shall postpone the hearing to another time.

When denied, he must answer at once.

SEC. 278. If the motion be denied, the defendant must immediately answer the indictment, either by demurring or pleading thereunto.

Proceedings when motion is granted.

SEC. 279. If the motion be granted, the court shall order that the defendant, if in custody, be discharged therefrom; or, if admitted to bail, that his bail be exonerated; or, if he has deposited money instead of bail, that the same shall be refunded to him, unless it direct that the case be re-submitted to the same or another grand jury.

Effect of order for submission.

SEC. 280. If the court direct that the case be re-submitted, the defendant, if already in custody, shall so remain, unless he be admitted to bail; or, if already admitted to bail, or money has been deposited instead thereof, the bail or money shall be answerable for the appearance of the defendant to answer a new indictment.

Power of the court when indictment is not found.

SEC. 281. Unless a new indictment be found before the next grand jury of the district is discharged, the court shall on the discharge of such grand jury, make the order prescribed in section 279.

Setting aside no bar to future prosecution.

SEC. 282. An order to set aside an indictment, as provided in this act, shall be no bar to a future prosecution for the same offense.

The pleading of defendant.

SEC. 283. The only pleading on the part of the defendant is either a demurrer or a plea.

Plea or demurrer, when put in.

SEC. 284. Both the demurrer and the plea must be put in, in open court, either at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose.

Grounds of demurrer.

SEC. 285. The defendant may demur to the indictment when it shall appear upon the face thereof, either:

First—That the grand jury by which it was found, had no legal authority to inquire into the offense charged, by reason of its not being within the local jurisdiction of the court.

Second—That it does not substantially conform to the requirements of section 233 and 234.

Third—That more than one offense has been charged in the indictment.

Fourth—That the facts stated do not constitute a public offense.

Fifth—That the indictment contains any matter which, if true, would constitute a legal justification, or excuse of the offense charged, or other bar to the prosecution.

Demurrer, how put in and form of.

SEC. 286. The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of objection to the indictment, or it shall be disregarded.

When heard.

SEC. 287. Upon the demurrer being filed, the objections presented thereby shall be heard either immediately or at such time as the court may appoint.

Judgment on.

SEC. 288. Upon considering the demurrer the court shall give judgment, either allowing or disallowing it, and an order to that effect shall be entered on the minutes.

When allowed, effect.

SEC. 289. If the demurrer be allowed, the judgment shall be final upon the indictment demurred to, and shall be a bar to another prosecution of the same offense, unless the court, being of opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, direct the case to be re-submitted to the same or another grand jury.

Proceedings when case not re submitted.

Sec. 290. If the court do not direct the case to be re-submitted, the defendant, if in custody shall be discharged, or if admitted to bail, his bail shall be exonerated, or if he has deposited money instead of bail, the money shall be refunded to him.

Same, where submisson ordered.

Sec. 291. If the court direct that the case be re-submitted anew, the same proceedings must be had thereon as are prescribed in section 280 and 281.

Proceedings if demurrer is disallowed.

Sec. 292. If the demurrer be disallowed, the court shall permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the court may allow. If he do not plead, the court shall direct the plea of not guilty to be entered for him.

When objections appear on face of indictment; time to take; as to jurisdiction.

Sec. 293. When the objections mentioned in section 285 appear upon the face of the indictment, they can only be taken advantage of by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment, or that the facts stated do not constitute a public offense, may be taken at the trial, under the plea of not guilty, and in arrest of judgment.

Kinds of pleas.

Sec. 294. There are three kinds of pleas to an indictment. A plea of:

First—Guilty. *Second*—Not guilty.

Third—A former judgment of conviction or acquittal of the offense charged, which may be pleaded either with or without the plea of "not guilty."

Plea, how put in.

Sec. 295. Every plea shall be oral, and shall be entered upon the minutes of the court.

Form of.

Sec. 296. The plea shall be entered in substantially the following form:

First—If the defendant plead guilty, "The defendant pleads that he is guilty of the offense charged in the indictment."

Second—If he plead not guilty, "The defendant pleads that he is not guilty of the offense charged in the indictment."

Third—If he plead a former acquittal or conviction, "The defendant pleads that he has already been convicted [or acquitted as the case may be] of the offense charged in the indictment, by the judgment of the court of———, [naming it] rendered at———, [naming the place] on the——day of———."

Plea of guilty how put in.

Sec. 297. A plea of guilty can in no case be put in, except by the defendant himself, in open court, unless upon an indictment against a corporation, in which case it may be put in by counsel.

Withdrawing plea.

SEC. 298. The court may, at any time before judgment, upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted.

What put in issue.

SEC. 299. The plea of not guilty shall be deemed a denial of any material allegation in the indictment.

What may be put in under plea of not guilty.

SEC. 300. All matters of fact, tending to establish a defense, may be given in evidence, under the plea of not guilty.

What is not a former acquittal.

SEC. 301. If the defendant was formerly acquitted, on the ground of a variance between the indictment and the proof, or upon an objection to the form or substance of the indictment, it shall not be deemed an acquittal of the same offense.

What is a former acquittal.

SEC. 302. When, however, he shall have been acquitted on the merits, he shall be deemed acquitted of the offense, notwithstanding any defect, in form or substance, in the indictment on which he was acquitted.

Effect of conviction or acquittal for higher offense.

SEC. 303. When the defendant shall have been convicted or acquitted upon an indictment, the conviction or acquittal shall be a bar to another indictment for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment as provided in section 411.

Plea of not guilty, upon refusal to plead.

SEC. 304. If the defendant refuse to answer the indictment by demurrer or plea, a plea of not guilty shall be entered.

When action may be removed to another county.

SEC. 305. A criminal action, prosecuted by indictment, may be removed from the court in which it is pending, on the application of the defendant, on the ground that a fair and impartial trial cannot be had in the county where the indictment is pending.

Application how and when made.

SEC. 306. The application must be made in open court, and in writing, verified by the affidavit of the defendant, and a copy of said affidavit must be served on the district attorney, at least one day before the application is made to the court.

Order to what court made.

SEC. 307. If the court be satisfied that the representation of the defendant is true, an order shall be made for the removal of the action to the district court of a county which is free from the like objection.

Order entered on minutes, copy of record transmitted.

SEC. 308. The order of removal shall be entered on the minutes, and the clerk shall immediately make out and transmit a certified copy of the entry, with a certified copy of the record, pleadings, and proceedings in the action, including the recognizances for the appearance of the defendant, andof the witnesses, to the court to which the action is removed.

Order to direct removal of defendant.

SEC. 309. If the defendant be in custody, the order shall direct his removal by the sheriff of the county where he is imprisoned, to the custody of the sheriff of the county to which the action is removed, and he shall be forthwith removed accordingly.

Proceedings after removal.

SEC. 310. The court to which the action is removed shall proceed to trial and judgment therein, as if the action had been commenced in such court. If it be necessary to have any of the original pleadings or other papers before such court, the court from which the action is removed shall, at any time on application of the district attorney, or the defendant, order such papers or pleadings to be transmitted by the clerk, a certified copy thereof being retained.

When issue of fact arises.

SEC. 311. An issue of facts arises:

First—Upon a plea of not guilty; or,

Second—Upon a plea of former conviction or acquittal of the same offense.

How tried.

SEC. 312. An issue of fact must be tried by a jury of the county in which the indictment was found unless the action be removed by order of the court into some other county.

Trial jury, how formed

SEC. 313. The trial juries for criminal actions shall be formed in the same manner as trial juries in civil action.

Docket of action, how kept.

SEC. 314. The clerk shall keep a docket of all the criminal actions pending in the court, in which he shall enter each indictment, according to the date of filing, specifying opposite the title of each action, whether it be for a felony or misdemeanor, and whether the defendant be in custody or on bail.

Issues on docket how disposed of.

SEC. 315. The issues on the docket shall be disposed of in the following order, unless upon the application of either party, for good cause shown by affidavit, and upon two days notice to the opposite party with a copy of the affidavit in support of the application, the court shall direct an indictment to be tried out of its order:

First—Indictments for felony when the defendant is in custody.

Second—Indictments for misdemeanor when the defendant is in custody.

Third—Indictments for felony where the defendant is on bail.

Fourth—Indictments for misdemeanor when the defendant is on bail.

Time to prepare for trial.

SEC. 316. After his plea, the defendant shall have at least two days to prepare for his trial if he require it.

Court may postpone.

SEC. 317. When an indictment is called for trial, the court may, upon sufficient cause shown by affidavit, direct the trial to be postponed to another day of the same term, or the next term.

Challenging jury.

SEC. 318. A challenge is an objection made to the trial jurors, and is of two kinds:

First—To the panel.

Second—To an individual juror.

When several defendants must join in challenge.

SEC. 319. When several defendants are tried together, they are not allowed to sever their challenges, but must join therein.

SEC. 320. A panel is a list of jurors returned by a sheriff to serve at a particular court, or for the trial of a particular cause.

Challenge to the panel.

SEC. 321. A challenge to the panel is an objection made to all the jurors returned and may be taken by either party.

On what founded.

SEC. 322. A challenge to the panel can only be found on a material departure from the forms prescribed by statute in respect to the drawing and return of the jury, or on the intentional omission of the sheriff to summon one or more of the jurors drawn.

When and how taken.

SEC. 323. A challenge to the panel must be taken before a juror is sworn, and must be in writing, specifying plainly and distinctly the facts constituting the grounds of challenge.

Exception to.

SEC. 324. If the sufficiency of the facts alleged as a ground of challenge be denied, the adverse party may except to the challenge. The exception need not be in writing, but shall be entered on the minutes of the court.

Trial of.

SEC. 325. Upon the exception, the court shall proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

Exception may be withdrawn, amending challenge.

SEC. 326. If, on the exception, the court deem the challenge sufficient, it may if justice require it, permit the party excepting, to withdraw his exception, and to deny the facts alleged in the challenge. If the exception be allowed, the court may, in like manner, permit an amendment of the challenge.

Denial and trial of.

SEC. 327. If the challenge be denied, the denial may in like manner, be oral and shall be entered on the minutes of the court, and the court shall proceed to try the question of fact.

Witnesses and trial of.

SEC. 328. Uupon such trial, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the grounds of challenge.

Objection on acccount of bias of officer summoning jury.

SEC 329. When the panel is formed from persons whose names are not drawn from the grand jury box, a challenge may be made to the panel on account of any bias of the officer who summoned the jury, which would be good grounds of challenge to a juror: Such objection shall be made in the same form and determined in the same manner as when made to a juror.

Effect of allowing or disallowing

SEC. 330. If, either upon an exception to the challenge or a denial of the fact, the challenge be allowed, the court shall discharge the jury, so far as the trial of the indictment in question is concerned. If it be disallowed, the court shall direct the jury to be empaneled.

Defendant be informed of right to challenge.

SEC. 331. Before a juror is called, the defendant must be informed by the court, or under its direction, that if he intend to challenge any individual juror, he must do so when the juror appears, and before he is sworn.

Challenge to individual juror.

SEC. 332. A challenge to an individual juror is either—

First—Peremptory; or,

Second—For cause.

When must be taken.

SEC. 333. It must be taken when the juror appears, and before he is sworn; but the court may, for good cause, permit it to be taken after the juror is sworn, and before the jury is completed.

Peremptory challenge by either party.

SEC. 334. A peremptory challenge may be taken by either party, and may be oral. It is an objection to a juror, for which no reason need be given, but upon which the court shall exclude him.

Number of, according to the offense charged.

SEC. 335. If the offense charged be punishable with death, or with imprisonment in the Territorial prison for life, the defendant is entitled to ten and the Territory to five peremptory challenges. On a trial for any other offense, the defendant is entitled to six and the Territory to three peremptory challenges.

Challenge for cause.

SEC. 336. A challenge for cause may be taken by either party. It is an objection to a particular juror, and is either—

First—General; that the juror is disqualified from serving in any case; or,

Second—Particular; that he is disqualified from serving in the case on trial.

General cause of.

SEC. 337. General causes of challenges are—

First—A conviction of felony.

Second—A want of any of the qualifications prescribed by statute to render a person a competent juror.

Third—Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as render him incapable of performing the duties of a juror.

Particular causes of.

SEC. 338. Particular causes of challenge are of two kinds:

First—For such a bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this act as implied bias.

Second—For the existence of a state of mind on the part of the juror in reference to the case which, in the exercise of a sound discretion on the part of the trier, leads to the inference that he will not act with entire impartiality, and which is known in this act as actual bias.

Challenge for implied bias.

SEC. 339. A challenge for implied bias may be taken for all or any of the following causes, and for no other:

First—Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant.

Second—Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant; or being a member of the family of the defendant or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment on wages.

Third—Being a party adverse to the defendant in a civil action, or having complained against, or been accused by him in a criminal prosecution.

Fourth—Having served on the jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment.

Fifth—Having served on a trial jury which has tried another person for the offense charged in the indictment.

Sixth—Having been one of a jury formerly sworn to try the same indictment, and whose verdict was set aside, or which was discharged without a verdict, after the case was submitted to it.

Seventh—Having served as a juror in a civil action brought against the defendant for the act charged as an offense.

Eighth—Having formed or expressed an unqualified opinion or belief that the prisoner is guilty of the offense charged.

Ninth—If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he shall neither be permitted nor compelled to serve as a juror.

Exemption not cause for challenge. SEC. 340. An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

Challenge for implied bias, how taken. SEC. 341. In a challenge for implied bias, one or more of the causes stated in section 339 must be alleged. In a challenge for actual bias, it must be alleged that the juror is biased against the party challenging. In either case the challenge may be oral, but must be entered on the minutes of the court.

Exceptions to; proceedings thereon. SEC. 342. The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings shall be had thereon as prescribed in sections 324 and 325, except that, if the exception be allowed, the juror shall be excluded. He may orally deny the facts alleged as the ground of challenge.

Trial of, when facts denied. SEC. 343. If the facts be denied, the challenge shall be tried as follows:

First—If it be for implied bias, by the court.

Second—If it be for actual bias, by triers.

Triers—number of; who to be. SEC. 344. The triers shall be three impartial persons not on the jury panel, appointed by the court. All challenges for actual bias shall be tried by three triers thus appointed, a majority of whom may decide.

Must be sworn. SEC. 345. The triers shall be sworn generally to inquire whether or not the several persons who may be challenged, and in respect to whom the challenges shall be given to them in charge, are biased against the challenged party, and to decide the same truly according to the evidence.

Juror challenged may be witness. SEC. 346. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and shall be compelled to answer every question pertinent to the inquiry therein.

Other testimony, when applicable. SEC. 347. Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues shall govern the admission or exclusion of testimony on the trial of the challenge.

Court must determine law and facts. SEC. 348. On the trial of a challenge for implied bias the court shall determine the law and the facts, and shall either allow or disallow the challenge, and direct an entry accordingly on the minutes.

Court to instruct triers. SEC. 349. On the trial of a challenge for actual bias, when the evidence is concluded, the court shall instruct the triers that it is their duty to find the challenge true, if, in their opinion, the evidence warrants the conclusion that the juror has such a bias against the party challenging him as to render him not impartial; and that if from the evidence they believe him free from such a bias, they must find the challenge not true. The court shall give them no other instructions.

Decision of triers final.

SEC. 350. The triers must thereupon find the challenge either true or not true, and their decision is final. If they find it true, the juror shall be excluded.

Order of taking challenges.

SEC. 351. All challenges to an individual juror, except peremptory, must be first taken by the defendant and then by the people; and each party must exhaust all his challenges to each juror as he is called, before the other begins.

Same.

SEC. 352. The challenges of either party need not all be taken at once, but they must be taken separately in the following order, including in each challenge all the causes of challenge belonging to the same class:

First—To the panel.

Second—To an individual juror for a general disqualification.

Third—To an individual juror for implied bias.

Fourth—To an individual juror for actual bias.

Peremptory challenge.

SEC. 353. If all the challenges on both sides be disallowed, either party may still take peremptory challenge, unless the peremptory challenges be exhausted.

CHAPTER IX.

Trial.

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Trial, order of.

SEC. 354. The jury having been empaneled and sworn, the trial shall proceed in the following order:

First—If the indictment be for felony, the clerk must read the indictment, and state the plea of the defendant to the jury. In all other cases this formality may be dispensed with.

Second—The district attorney, or other counsel for the people, must open the cause, and offer the evidence in support of the indictment, *Third*—The defendant, or his counsel, may then open the defense, and offer the evidence in support thereof.

Fourth—The parties may then respectively offer rebutting testimony only, unless the court, for good reasons, in furtherance of justice, permit them to offer evidence upon their original cause.

Fifth—When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the counsel for the people must open and must conclude the argument.

Sixth—The judge shall then charge the jury, if requested by either party; he may state the testimony and declare the law, but shall not charge the jury in respect to matters of fact. Such charge shall be reduced to writing before it is given, and in no case shall any charge or instructions be given to the jury otherwise than in writing, unless by the mutual consent of the parties.

When prescribed may be departed from.

SEC. 355. When the state of the pleadings require it, or in any other case, for good reasons and in the sound discretion of the court, the order prescribed in the last section may be departed from.

Counsel, number of.

SEC. 356. If the indictment be for an offense punishable with death, the counsel on each side may argue the cause to the jury, in which case they must do so alternately. If it be for any other offense, the court may, in its discretion restrict the argument to one counsel on each side.

Innocence of defendant presumed; when acquitted.

SEC. 357. A defendant in a criminal action is presumed to be innocent until the contrary be proved; and in case of a reasonable doubt whether his guilt be satisfactorily shown, he is entitled to be acquitted.

Reasonable doubt of guilt, degrees of.

SEC. 358. When it legally appears that a defendant has committed a public offense, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degrees only.

May be tried jointly or separately.

SEC. 359. When two or more defendants are jointly indicted for any offense, they shall be jointly tried, unless, for good cause shown by the prosecution or defense, the court shall otherwise direct.

Defendant may be discharged from indictment and be witness.

SEC. 360. When two or more persons are included in the same indictment, the court may, at any time before the defendant has gone into his defense, on the application of the district attorney, direct any defendant to be discharged from the indictment, that he may be a witness for the people.

When defendant may be witness for co-defendant.

SEC. 361. When two or more persons are included in the same indictment, and the court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it shall order him to be discharged from the indictment before the evidence shall be deemed closed, that he may be a witness for his co-defendant.

Discharge deemed an acquittal.

SEC. 362. The order mentioned in the two last sections shall be deemed an acquittal of the defendant discharged, and shall be a bar to another prosecution for the same offense.

Rape, proof of.

SEC. 363. Proof of actual penetration into the body is sufficient to sustain an indictment for rape or for the crime against nature.

Accomplice—evidence of to be corroborated.

SEC. 364. A conviction cannot be had upon the testimony of an accomplice, unless he be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration shall not be sufficient if it merely show the commission of the offense or the circumstances thereof.

Proceedings when facts show offense greater than that charged.

SEC. 365. The court may also direct the jury to be discharged when it appears that it has not jurisdiction of the offense, or that the facts charged in the indictment do not constitute an offense punishable by law.

Proceedings when court has not jurisdiction of case.

SEC. 366. If the jury be discharged because the court has not jurisdiction of the offense charged in the indictment, and it appears that it was committed out of the jurisdiction of this Territory, it shall order the defendant to be discharged.

Proceedings when exclusive jurisdiction of offense in another county.

SEC. 367. If the offense were committed within the exclusive jurisdiction of another county of this Territory, the court shall direct the defendant to be committed for such time as shall be deemed reasonable, to await a warrant from the proper county for his arrest; or if the offense be a misdemeanor only, it may admit him to bail in a recognizance, with sufficient sureties, that he will, within such time as the court may appoint, render himself amenable to a warrant for his arrest from the proper county, and if not sooner arrested thereon, will attend at the office of the sheriff of the county where the trial was had, at a certain time particularly designated in the recognizance, to surrender himself upon the warrant, if issued, or that his bail will forfeit such sum as the court may fix and to be mentioned in the recognizance.

Duties of clerk Papers to be transmitted ;cost of.

SEC. 368. In the case provided for in the last section the clerk shall forthwith transmit a certified copy of the indictment, and of all the papers filed in the action, to the district attorney of the proper county, the expense of which transmission shall be chargeable to that county.

SEC. 369. If the defendant be not arrested, as provided in section 367, on a warrant from the proper county, he shall be discharged from custody, or his bail in the action shall be exonerated, or money deposited instead of bail shall be refunded, as the case may be, and the sureties in the recognizance shall be discharged. When defendant discharged.

SEC. 370. If he be arrested, the same proceedings shall be had thereupon as upon the arrest of a defendant in another county on a warrant of arrest issued by a magistrate. Proceedings on arrest.

SEC. 371. If the jury be discharged because the facts as charged do not constitute an offense punishable by law, the court shall order that the defendant, if in custody, be discharged; or, if admitted to bail, that his bail be exonerated; or, if he have deposited money instead of bail, that the money deposited be refunded to him; unless, in the opinion of the court, a new indictment can be framed upon which the defendant can be legally convicted, in which case it may direct that the case be submitted to the same or another grand jury. Proceedings when facts do not constitute offense.

SEC. 372. If the court direct that the case be submitted anew, the same proceedings must be had thereon as are prescribed in sections 280 and 281, both inclusive. Proceedings when case submitted anew.

SEC. 373. If at any time after the evidence on either side is closed the court deem the same insufficient to warrant a conviction, it may advise the jury to acquit the defendant. But the jury shall not be bound by such advice, nor shall the court for any cause prevent the jury from giving a verdict, except as provided in sections 360, 361 and 365. When court may advise acquittal; effect of.

SEC. 374. Whenever in the opinion of the court it is proper that the jury should view the place in which the offense is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of the sheriff, to the place, which shall be shown to them by a person appointed by the court for that purpose. When view may be had.

SEC. 375. No person shall be suffered to speak to the jury on any subject connected with the trial, and the officer shall return them into court without unnecessary delay or at a specified time. No person allowed to speak to jury.

SEC. 376. If a juror have any personal knowledge respecting a fact in controversy in the case, he must declare the same in open court during the trial. If, during the retirement of the jury, a juror declare any fact which could be evidence in the case, as of his own Juror must disclose knowledge of controversy in court; must be witness.

knowledge, the jury must return into court. In either of these cases the juror making the statement must be sworn as a witness, and examined in the presence of the parties.

When jury may separate; when not—discretion of court; how kept.

SEC. 377. The jury sworn to try an indictment for a misdemeanor may, at any time during the trial, in the discretion of the court, be allowed to separate. In all cases on the trial of an indictment for felony, the jurors sworn shall be kept together until they are finally discharged by the court from further consideration of the cause. At each adjournment or recess of the court which may occur during the trial, the sheriff or his deputy shall keep the jury together in his charge; and it shall be the duty of the sheriff, at the expense of the county, to provide a suitable place for the board and lodging of the jury. The court, at each recess or adjournment during the trial, shall administer to the sheriff or his deputy the following oath:

> You do solemnly swear that you will, during this recess [or adjournment, as the case may be], keep this jury together; and that you will return them into court at the opening thereof; and that, in the meantime, you will not allow any person to speak to them, or either of them, nor speak to them, or either of them, yourself, on the subject of the case now on trial, so help you God."

Court must admonish jury at adjournment thereof.

SEC. 378. The jury shall also, at each adjournment of the court, whether they be permitted to separate or be kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves or with any one else on any subject connected with the trial, or to form or express any opinion thereon until the cause is finally submitted to them.

Jury sick; what proceedings had.

SEC. 379. If, before the conclusion of the trial, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case a new juror may be sworn, and the trial begun anew, or the jury may be discharged, and a new jury then or afterward empaneled.

Questions of law, court must decide.

SEC. 380. The court shall decide all questions of law which shall arise in the course of the trial.

Jury to determine law and fact.

SEC. 381. On the trial of an indictment for libel, the jury shall have the right to determine the law and the fact.

Questions of law and fact, how tried; must receive the law from court.

SEC. 382. On the trial of an indictment for any other offense than libel, questions of law are to be decided by the court, saving the right of the defendant to except questions of fact by the jury. And although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

What court shall state in charging jury.

SEC. 383. In charging the jury, the court shall state to them all such matters of law as it shall think necessary for their information in giving their verdict.

Either party may ask instructions; must be in writing.

SEC. 384. Either party may present to the court any written charge, and request that it may be given. If the court think it correct and pertinent, it shall be given; if not, it shall be refused.

How court shall give instructions to jury

SEC. 385. Upon each charge so presented, and given or refused, the court shall endorse its decision, and shall sign it. If part be given and part refused, the court shall distinguish, showing by the endorsement what part of the charge was given and what part refused.

How jury to decide after charge; conduct of.

SEC. 386. After hearing the charge, the jury may either decide in court or may retire for deliberation. If they do not agree without retiring, one or more officers must be sworn to keep them together in some private and convenient place, and not permit any person to speak to them, nor to speak to them themselves, unless it be to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed.

Defendant on bail may be committed.

SEC. 387. When a defendant, having given bail, appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county to abide the judgment or further order of the court, and he shall be committed and held in custody accordingly.

Room must be provided

SEC. 388. A room shall be provided by the sheriff of each county for the use of the jury upon their retirement for deliberation, with suitable furniture, fuel, lights and stationary, unless the same have been already furnished by the county. The court may order the sheriff to do so, and the expenses incurred by him in carrying the order into effect, when certified by the court, shall be a county charge.

Provision for jury while deliberating.

SEC. 389. While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, they shall be provided by the sheriff, at the expense of the county, with suitable and sufficient food and lodging.

Papers which the jury may take.

SEC. 390. Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence in the case, or copies of such parts of public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession, and also the instructions of the court.

SEC. 391. The jury may also take with them notes of the testimony or other proceedings on the trial taken by themselves, or any of them, but none taken by any other person.

Jury may be brought into court for instruction.

SEC. 392. After the jury have retired for deliberation, if there be any disagreement between them as to any part of the testimony, or if they desire to be informed on any point of law arising in the case, they must require the officer to conduct them into court. Upon their being brought into court, the information required shall be given in the presence of, or after notice to the district attorney and the defendant, or his counsel.

When jury may be discharged after returning.

SEC. 393. If, after the retirement of the jury, one of them be taken so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept for deliberation, the jury may be discharged.

SEC. 394. Except as provided in the last section, the jury shall not be discharged after the cause is submitted to them until they have agreed upon their verdict and rendered it in open court; unless by the consent of both parties, entered upon the minutes; or unless, at the expiration of such time as the court shall deem proper, it satisfactorily appears that there is no reasonable probability that the jury can agree.

Effect of discharge without verdict.

SEC. 395. In all cases where a jury are discharged or prevented from giving a verdict by reason of an accident or other cause, except where the defendant is discharged from the indictment during the progress of the trial or after the cause is submitted to them, the cause may be again tried at the same or another term.

Adjournment during absence of jury.

SEC. 396. While the jury are absent the court may adjourn from time to time as to other business; but it shall, nevertheless, be deemed to be open for every purpose connected with the cause submitted to the jury until a verdict be rendered or the jury discharged.

Final adjournment discharges.

SEC. 397. A final adjournment of the court discharges the jury.

Expenses of two or more counties for judicial purposes.

SEC. 398. When two or more counties are joined for judicial purposes, the expenses accruing from the trial of cases shall be assigned to the county in which the offense was committed, for which trial was had.

Verdict, how delivered.

SEC. 399. When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest shall be discharged without giving a verdict. In such a case the cause may be again tried at the same or another term.

Defendant, when must appear.

SEC. 400. If the indictment be for a felony, the defendant must, before the verdict, appear in person; if it be for a misdemeanor, the verdict may be rendered in his absence.

Jury to be asked if they agreed

SEC. 401. If the jury appear, they shall be asked by the court or clerk whether they have agreed upon a verdict; and if the foreman answer in the affirmative, they shall, on being required, declare the same.

General or special verdict.

SEC. 402. The jury may either render a general verdict, or, when they are in doubt of the legal effect of the facts proved, they may, except upon an indictment for libel, find a special verdict.

General verdict, what constitutes.

SEC. 403. A general verdict upon a plea of "Not guilty" is either "Guilty" or "Not guilty," which imports a conviction or acquittal of the offense charged in the indictment. Upon a plea of a former conviction or acquittal of the same offense, it is either "For the people" or "For the defendant." When the defendant is acquitted on the ground that he was insane at the time of the commission of the act charged, the verdict must be "Not guilty, by reason of insanity." When the defendant is acquitted on the ground of variance between the indictment and the proof, the verdict must be "Not guilty, by reason of variance between indictment and proof."

Special verdict, what constitutes.

SEC. 404. A special verdict is that by which the jury find the facts only, leaving the judgment to the court. It must present the conclusions of fact as established by evidence, and not the evidence to prove them; and these conclusions of fact must be so presented as that nothing remains to the court but to draw conclusions of law upon them.

Special verdict reduced to writing.

SEC. 405. The special verdict must be reduced to writing by the jury, or in their presence entered upon the minutes of the court, read to the jury, and agreed to by them before they are discharged.

Special verdict, form of

SEC. 406. The special verdict need not be in any particular form, but shall be sufficient if it present intelligibly the facts found by the jury.

Judgment on, how given.

SEC. 407. The court shall give judgment upon the special verdict as follows:

First—If the plea be "not guilty," and the fact prove the defendant guilty of the offense charged in the indictment, or of any other offense of which he could be convicted under that indictment, judgment shall be given accordingly; but if the facts found do not prove the defendant guilty of the offense charged, or of any offense of which he could be so convicted under the indictment, judgment of acquittal shall be given.

Second—If the plea be a former conviction or acquittal of the same offense, the court shall give judgment of acquittal or conviction, according as the facts prove or fail to prove the former conviction or acquittal.

New trial, when ordered.

SEC. 408. If the jury do not, in a special verdict, pronounce affirmatively or negatively on the facts necessary to enable the court to give judgment; or if they find the evidence of facts merely, and not the conclusions of facts from the evidence as established to their satisfaction, the court shall order a new trial.

Jury must find degree.

SEC. 409. Whenever a crime is distinguished into degrees, the jury, if they convict the defendant, must find the degree of the crime of which he is guilty.

Verdict may be rendered as to some defendants.

SEC. 410. On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly; and the case as to the rest may be tried by another jury.

Verdict, when to be reconsidered.

SEC. 411. When there is a verdict of conviction in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider their verdict; and if after such reconsideration they return the same verdict, it must be entered; but when there is a verdict of acquittal, the court cannot require the jury to reconsider it.

SEC. 412. If the jury render a verdict which is neither general nor special, the court may direct them to reconsider it, and it shall not be recorded until it be rendered in some form from which it can be clearly understood what is the intent of the jury—whether to render a general verdict, or to find the facts specially, and to leave the judgment to the court.

Persistence of jury in informality to work acquittal.

SEC. 413. If the jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant upon the issue, it shall be entered in the terms in which it is found, and the court shall give judgment of acquittal. But no judgment of conviction can be given unless the jury find expressly against the defendant upon the issue, or judgment be given against him on a special verdict.

Jury may be polled.

SEC. 414. When a verdict is rendered, and before it is recorded, the jury may be polled, on the requirement of either party, in which case they shall be severally asked whether it be their verdict, and if any one answer in the negative, the jury shall be sent out for further deliberation.

Verdict, recording of.

SEC. 415. When the verdict is given, and is such as the court may receive, the clerk must immediately record it in full on the minutes, and must read it to the jury, and inquire of them whether it be their verdict. If any juror disagree, the fact must be entered in the minutes, and the jury again sent out; but if no disagreement be expressed, the verdict is complete, and the jury must be discharged from the case.

Verdict of acquittal, proceedings on.

SEC. 416. If judgment of acquittal be given on a general verdict, and the defendant be not detained for any other legal cause, he must be discharged as soon as the verdict is given, except that where the acquittal is for a variance between the proof and the indictment, which may be obviated by a new indictment, the court may order his detention, to the end that a new indictment may be preferred in the same manner and with like effect as provided in sections 371 and 372.

If guilty, proceedings

SEC. 417. If a general verdict be rendered against the defendant, or a special verdict be given, he must be remanded if in custody; or if on bail, he may be committed to the proper officers of the county to await the judgment of the court upon the verdict. If so committed, his bail shall be exonerated; or if money be deposited instead of bail, it shall be refunded to the defendant.

CHAPTER X.

Proceedings After Trial and Before Judgment.

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SEC. 418. On the trial of an indictment exceptions may be taken by the defendant to a decision of the court: *Bill of exceptions by defendant.*

First—In disallowing a challenge to the panel of the jury, or to an individual juror for implied bias.

Second—In admitting or rejecting testimony on the trial of a challenge to a juror for actual bias.

Third—In admitting or rejecting testimony, or in deciding any question of law not a matter of discretion, or in charging or instructing the jury upon the law or the trial of the issue.

SEC. 419. A bill containing the exceptions must be settled and signed by the judge, and filed with the clerk within ten days after the trial of the cause, unless further time be granted by said judge, or a judge of the Supreme Court. *Must be settled and signed within ten days.*

SEC. 420. The bill of exceptions shall contain so much of the evidence only as is necessary to present the question of law upon which the exceptions were taken; and the judge shall, upon the settlement of the bill, whether agreed to by the parties or not, strike out evidence or other matters not material to the questions to be raised. *What to contain.*

SEC. 421. The bill of exceptions must be filed with the clerk of the court as soon as it is signed by the judge. *When to be filed.*

SEC. 422. When any written charge has been presented and given, or refused, the question or questions presented in such charge need not be excepted to nor embodied in a bill of exceptions; but the written charge itself, with the endorsement showing the action of the court, shall form part of the record, and any error in the decision of the court thereon may be taken advantage of on appeal, in like manner as if presented in a bill of exceptions. *Written charges to form part of record.*

SEC. 423. A new trial is a re-examination of the issue in the same court before another jury after a verdict has been given. It places the parties in the same condition as if no trial had been had. All the testimony must be produced anew, and the former verdict cannot be used or referred to either in evidence or in argument. *New trial.*

SEC. 424. The court in which a new trial is had upon the issue of fact has power to grant a new trial where a verdict has been rendered against the defendant, upon his application, in the following cases only: *When new trial may be granted.*

First—When the trial has been had in his absence, if the indictment be for felony.

Second—When the jury has received any evidence out of court other than that resulting from a view, as provided in section 374.

Third—When the jury has separated without leave of the court after retiring to deliberate upon the verdict, or been guilty of any misconduct tending to prevent a fair and just consideration of the case.

Fourth—When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors.

Fifth—When the court has misdirected the jury in a matter of law.

Sixth—When the verdict is contrary to law or evidence.

Seventh—When new evidence is discovered material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial.

When a motion for a new trial is made upon the ground of newly-discovered evidence, the defendant must produce at the hearing, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given; and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as, under all circumstances of the case, may seem reasonable.

When application for new trial to be made.

SEC. 425. The application for a new trial must be made before the judgment is entered in the case.

Motion in arrest of judgment, on what founded.

SEC. 426. A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or a verdict against the defendant on a plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment mentioned in section 285.

SEC. 427. The court may also, on its own view of any of these defects, arrest the judgment without motion.

When must be made.

SEC. 428. The motion must be made before or at the time when the defendant is called for judgment.

Effect of allowing motion.

SEC. 429. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found.

Court shall appoint time for pronouncing judgment.

SEC. 430. After a plea or verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquittal, if the judgment be not arrested or a new trial granted, the court shall appoint a time for pronouncing judgment.

What time to be appointed.

SEC. 431. The time appointed shall be at least two days after the verdict, if the court intend to remain in session so long; or, if not, as remote a time as can reasonably be allowed. But in no case shall the judgment be rendered in less than six hours after the verdict.

Presence of defendant when necessary; court to determine degree of crime.

SEC. 432. For the purpose of judgment, if the conviction be for felony, the defendant must be personally present; if it be for misdemeanor, judgment may be pronounced in his absence. Upon a plea of guilty, of a crime distinguished or divided into degrees, the court must, before passing sentence, determine the degree.

Felony; person co victed of be brou before cou for sente

SEC. 433. When the defendant is convicted of a felony, if he be in custody, the court may direct the officer in whose custody he is to bring him before it for judgment, and the officer shall do so.

Defendan out on failing t appear; bench rant.

SEC. 434. If the defendant has been discharged on bail, or has deposited money instead thereof, and do not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the recognizance or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

Warra may be issue several counti

SEC. 435. The clerk, on the application of the district attorney, may, accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties.

Bench rant, of.

SEC. 436. The bench warrant shall be substantially in the following form:

TERRITORY OF IDAHO, }
County of ——— }

The People of the United States in the Territory of Idaho to any Sheriff Constable, Marshal, or Policeman in this Territory:

A. B., having been, on the ——— day of ——— A. D. 18—— duly convicted in the district court of the district of ——— of the crime of ——— [designating it generally]:

You are therefore commanded, Forthwith to arrest the above named A. B., and bring him before that court for judgment; or, if the court have adjourned for the term, that you deliver him into the custody of the sheriff of the county of ———

{ SEAL. } GIVEN under my hand, with the seal of the said Court affixed, this the ——— day of ——— A. D. 18——

By order of the Court,
E. F., *Clerk.*

SEC. 437. The bench warrant may be served in any county in the same manner as a warrant of arrest, except that when served in another county it need not be endorsed by a magistrate of that county.

SEC. 438. Whether the bench warrant be served in the county in which it was issued or in another county, the officer shall arrest the defendant and bring him before the court or commit him to the officer mentioned in the warrant, according to the command thereof.

Proceedings when defendant appears.

SEC. 439. When the defendant appears for judgment, he shall be informed by the court, or by the clerk under its direction, of the nature of the indictment, and of his plea, and the verdict, if any there are; and shall be asked whether he have any legal cause to show why judgment should not be pronounced against him.

Causes against judgment.

SEC. 440. He may show for cause against the judgment—

First—That he is insane; and if, in the opinion of the court, there be reasonable grounds for believing him to be insane, the question of his insanity shall be tried as provided in sections 567 to 570, both inclusive. It upon the trial of that question the jury find that he is of sound mind, judgment shall be pronounced; but if they find him insane, he shall be committed to the custody of some proper and suitable person until he become sane, and when notice is given of that fact, as provided in section 574, he shall be brought before the court for judgment.

Second—That he has good cause to offer either in arrest of judgment or for a new trial, in which case the court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment or for a new trial.

Judgment, rendition of

SEC. 441. If no sufficient cause be alleged or appears to the court why judgment should not be pronounced, it shall thereupon be rendered.

Judgment where defendant found guilty of two or more offenses.

SEC. 442. If the defendant has been convicted of two or more offenses before judgment on either, the judgment may be that the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of the offenses.

Judgment to pay fine; may order imprisonment.

SEC. 443. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied, specifying the extent of the imprisonment, which shall not exceed one day for every two dollars of the fine, or in that proportion.

Lien of said judgment.

SEC. 444. A judgment that the defendant shall pay a fine shall constitute a lien in like manner as a judgment for money rendered in a civil action.

Entry of judgment; record, how constituted

SEC. 445. When the judgment upon conviction is rendered, the clerk shall enter the same in the minutes, stating briefly the offense for which the conviction has been had, and shall, within five days, annex together and file the following papers, which shall constitute the record of the action:

First—A copy of the minutes of any challenge which may have been interposed by the defendant to the panel of the grand jury or to any individual grand juror, and the proceedings thereon.

Second—The indictment, and a copy of the minutes of the plea of, or demurrer.

Third—A copy of the minutes of any challenge which may have interposed to the panel of the trial jury or to an individual juror, and the proceedings thereon.

Fourth—A copy of the minutes of the trial.

Fifth—A copy of the minutes of the judgment.

Sixth—The bill of exceptions, if there be one.

Seventh—The written charges asked of the court, if there be any.

Eighth—A copy of all the charges given and refused, and the endorsements thereon.

Authority for execution.

SEC. 446. When a judgment has been pronounced, a certified copy of the entry thereof in the minutes shall be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require the execution thereof, except when judgment of death is rendered.

Execution on judgment for fine

SEC. 447. If the judgment be for a fine alone, execution may be issued thereon as on a judgment in a civil action.

On judgment for imprisonment

SEC. 448. If the judgment be imprisonment, or a fine and imprisonment until it be satisfied, the defendant shall forthwith be committed to the custody of the proper officer, and by him detained until the judgment be complied with.

On judgment for death.

SEC. 449. When judgment of death is rendered, a warrant, signed by the judge and attested by the clerk, under the seal of the court, shall be drawn and delivered to the sheriff. It shall state the conviction and judgment, and appoint a day on which the judgment shall be executed, which shall not be less than thirty nor more than sixty days from the time of the judgment.

Statement to be transmitted to Governor.

SEC. 450. The judge of the court at which a conviction requiring judgment of death shall have been had, shall, immediately after the conviction, transmit to the Governor, by mail or otherwise, a statement of the conviction and judgment, and of the testimony given at the trial.

Governor may require opinion of Supreme Court.

SEC. 451. The Governor may thereupon require the opinion of the justices of the Supreme Court and the district attorneys of the several judicial districts, or any of them, upon the statement as furnished.

Suspension of judgment of death.

SEC. 452. No judge, court or officer other than the Governor can suspend the execution of a judgment of death, except the sheriff, as provided in the seven succeeding sections, unless an appeal be taken. When an appeal has been taken from a judgment of death, the appellate court, and any judge thereof in vacation, may suspend the execution until the appeal is heard and determined.

Inquiry into sanity of defendant.

SEC. 453. If after judgment of death there be good reason to suppose that the defendant has become insane, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury of twelve persons to inquire into the supposed insanity, and shall give immediate notice thereof to the district attorney.

District attorney shall attend inquisition; may issue process for witnesses.

SEC. 454. The district attorney shall attend the inquisition, and may produce witnesses before the jury, for which purpose he may issue process in the same manner as for witnesses to attend before the grand jury; and disobedience thereto may be punished in like manner as disobedience to process issued by that court.

Certificate of inquisition.

SEC. 455. A certificate of the inquisition shall be signed by the jurors and the sheriff, and filed with the clerk of the court in which the conviction was had.

Proceedings on such inquiry.

SEC. 456. If it be found by the inquisition that the defendant is sane, the sheriff shall execute the judgment; but if it be found that he is insane, the sheriff shall suspend the execution of the judgment until he receive a warrant from the Governor or from the judge of the court by which the judgment was rendered, directing the execution of the judgment.

Effect of finding.

SEC. 457. If the inquisition find that the defendant is insane, the sheriff shall immediately transmit the same to the Governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment.

Inquiry into pregnancy of female convict.

SEC. 458. If there be good reason to suppose that a female against whom a judgment of death is rendered is pregnant, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury of three physicians to inquire into the supposed pregnancy. Immediate notice thereof shall be given to the district attorney, and the provisions of sections 454 and 455 shall govern the proceedings of the inquisition.

Effect of non-pregnancy; effect of pregnancy.

SEC. 459. If it be found by the inquisition that such female is not pregnant, the sheriff shall execute the judgment; if it be found that she is pregnant, the sheriff shall suspend the execution of the judgment, and transmit the inquisition to the Governor.

Same.

SEC. 460. When the Governor is satisfied that such female is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment.

Proceedings when judgment not executed.

SEC. 461. If for any reason a judgment of death shall not have been executed, and the same remain in force, the court in which the conviction was had, on the application of the district attorney, shall order the defendant to be brought before it; or if he be at large, a warrant for his apprehension may be issued.

Court shall inquire into facts; if no legal reason against, shall order execution.

SEC. 462. Upon the defendant being brought before the court, it shall inquire into the facts; and if no legal reason exists against the execution of the judgment, shall make an order to the sheriff of the proper county to execute the judgment at the time specified therein, and the sheriff shall execute the judgment accordingly.

Death penalty, how inflicted.

SEC. 463. The punishment of death shall be inflicted by hanging the defendant by the neck until he be dead, which judgment must be executed within the walls or yard of a jail or penitentiary, or some convenient private place in the county. The sheriff of the county must be present at the execution, when had in the county jail or county; and when had in the Territorial prison, the marshal or warden, or the officer into whose custody he is delivered, shall be present, and must invite the presence of a physician, the district attorney of the county, and at least twelve reputable citizens, to be selected by him; and he shall, at the request of the defendant, permit such ministers of the gospel, not exceeding two, as the defendant may name, and persons, relatives or friends, not to exceed five, to be present at the execution, together with such peace officers as he may think expedient to witness the execution. But no other persons than those mentioned in this section can be present at the execution, nor can any person under age be allowed to witness the same.

Sheriff must make return

SEC. 464. After the execution the sheriff or officers who shall have performed the duty of executing the judgment must make a return upon the death warrant showing the time, mode and manner in which it was executed.

Appeal, to and from what courts

SEC. 465. The party aggrieved in a criminal action, whether on the part of the people or on the part of the defendant, shall have the right to appeal as follows:

First—To the district court of the county, from a final judgment only of the probate and justices' courts of the same county whenever the penalty imposed by the judgment of the court amounts to the sum of thirty dollars, exclusive of the costs of prosecution, or when the judgment of the court imposes a term of imprisonment in the county jail for a period of over thirty days.

Second—To the Supreme Court, from a final judgment of the district court in all criminal cases when the judgment of the court imposes a fine exceeding the sum of one hundred dollars, exclusive of the costs of the prosecution, or when such judgment is for imprisonment in the county jail for a period of over fifty days; also from an order of the district court allowing a demurrer granting or refusing a new trial. The appeal to the Supreme Court from the district court shall be on questions of law alone.

Parties on designated. SEC. 466. The party appealing shall be known as the "appellant," and the adverse party as the "respondent."

What may be reviewed SEC. 467. Upon the appeal, any decision of the court in an intermediate order or proceeding forming a part of the record may be reviewed.

Time. SEC. 468. An appeal must be taken within sixty days after the judgment was rendered.

How taken. SEC. 469. An appeal may be taken by the service of a notice in writing on the clerk of the court in which the action was tried, stating that the appellant appeals from the judgment.

Same. SEC. 470. If the appeal be taken by the defendant, a similar notice must be served on the district attorney.

Same. SEC. 471. If it be taken by the people, a similar notice must be served on the defendant, if he be a resident of the county; if not, on the counsel (if any) who shall appear for him on the trial, if he be living within the county. If such service, after due dilligence, cannot be made, the appellate court, upon proof thereof, shall make an order for the publication of the notice in some newspaper, and for such time as it may deem proper.

When deemed perfect. SEC. 472. At the expiration of the time appointed for the publication, on filing an affidavit of the publication, the appeal shall be deemed perfected.

Appeal by people not to stay judgment. SEC. 473. An appeal taken by the people shall in no case stay or affect the operation of a judgment in favor of the defendant.

Effect of. SEC. 474. No appeal from a judgment of conviction, unless it be one imposing a fine only, or of death, shall stay the execution of the judgment; but the defendant if in custody, shall remain in custody, to abide the judgment on the appeal, unless admitted to bail, as prescribed in section 501.

SEC. 475. Upon the appeal being taken, the clerk with whom the notice of appeal is filed must, within ten days thereafter, without charge, transmit to the clerk of the Supreme Court a copy of the notice of appeal and of the record. Copy of record must be transmitted to supreme court.

SEC. 476. If the appeal be irregular in any substantial particular, but not otherwise, the appellate court may, on any day in term, on motion of the respondent, upon five days notice, with copies of the papers upon which the motion is founded, order the same to be dismissed. Dismissing appeal.

SEC. 477. The court may also, upon like motion, dismiss the appeal, if the return be not made as provided in section 475, unless for good cause it enlarge the time for that purpose. Same.

SEC. 478. All appeals in criminal cases shall be tried and determined at the first term of the appellate court after the record is filed, or as soon thereafter as the same can be heard. Argument of; appellate court.

SEC. 479. Judgment of affirmance may be granted without argument, if the appellant fail to appear; but judgment of reversal can only be given upon argument, though the respondent fail to appear. Same.

SEC. 480. Upon the argument of the appeal, if the offense be punishable with death, two counsel shall be heard on each side if they desire it; in any other case the court may, in its discretion, restrict the argument to one counsel on each side. Same.

SEC. 481. The defendant need not appear in the appellate court. Defendant need not appear.

SEC. 482. After hearing the appeal, the court shall give judgment without regard to technical error or defect, which do not affect the substantial rights of the parties. Judgment.

SEC. 483. The appellate court may reverse, affirm or modify the judgment appealed from, and may, if necessary or proper, order a new trial. Extent of judgment.

SEC. 484. When a new trial is ordered, it must be directed to be had in the court of the district from which the appeal was taken. New trial, where to be had.

SEC. 485. If a judgment against the defendant be reversed without ordering a new trial, the appellate court shall direct, if he be in custody, that he be discharged therefrom; or if he be admitted to bail, that his bail be exonorated; or if money be deposited instead of bail, that it be refunded to the defendant. Proceedings on reversal of judgment.

SEC. 486. On a judgment of affirmance against the On affirmation of.

defendant, the original judgment, shall be carried into execution, as the appellate court shall direct.

Entry of judgment and copy.

SEC. 487. When the judgment of the appellate court is given, it shall be entered in the minutes, and a certified copy of the entry shall be forthwith remitted to the clerk of the court from which the appeal was taken.

Papers to remain in appellate court.

SEC. 488. The papers returned to the appellate court shall there remain of record, and shall not be remitted to the court below.

All further proceedings to be had in court below

SEC. 489. After the certificate of judgment has been remitted, as provided in section 487, the appellate court shall have no further jurisdiction of the appeal, or of the proceedings thereon, and all orders which may be necessary to carry the judgment into effect shall be made by the court to which the certificate is remitted.

CHAPTER XI.

Bail.

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Bail defined.

SEC. 490. Admission to bail is the order of a competent court or magistrate that the defendant is discharged from actual custody upon bail.

Taking.

SEC. 491. The taking of bail consists in the acceptance by a competent court or magistrate of the undertaking of sufficient bail for the appearance of the defendant, according to the terms of the recognizance, or that the bail will pay to the people of the United States of the Territory of Idaho a specified sum.

When not admitted to.

SEC. 492. A defendant charged with an offense punishable with death cannot be admitted to bail, when the proof of his guilt is evident or the presumption thereof great. The finding of an indictment does not add to the strength of the proof or the presumptions to be drawn therefrom.

Admission to.

SEC. 493. If the charge is for any other offense, than the one in the preceeding section—the defendant may be admitted to bail before conviction, as a matter of right.

Indiscretion, notice necessary.

SEC. 494. When the admission to bail is a matter of discretion, the court or officer by whom it may be ordered, shall require such notice of the application therefor as he may deem reasonable to be given to the district attorney of the county where the examination is had.

SEC. 495. After conviction of an offense not punishable with death, a defendant who has appealed may be admitted to bail:

First—As a matter of right, where the appeal is from a judgment imposing a fine only.

Second—As a matter of discretion as provided in section 492.

Defendant admitted to bail, how,

SEC. 496. Before conviction a defendant may be admitted to bail:

First—For his appearance before a magistrate, on the examination of the charge, before being held to answer.

Second.—To appear at the court to which the magistrate is required to return the depositions and statement, upon the defendant being held to answer after the examination.

Third—After indictment, either before the bench warrant is issued for his arrest, or upon an order of the court committing or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment in the court in which it is found, or to which it may be sent or removed for trial.

After conviction on appeal.

SEC. 497. After conviction and upon an appeal, the defendant may be admitted to bail as follows:

First—If the appeal be from a judgment imposing a fine only, on the recognizance of bail that he will pay the same or such part of it as the appellate court may direct, if the judgment be affirmed or modified, or the appeal dismissed,

Second—If judgment of imprisonment has been given, that he will surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the appeal being dismissed.

Held to answer.

SEC. 498. When the defendant has been held to answer, as provided in section 160, the admission of bail may be by the magistrate by whom he is so held, or by any magistrate who has power to issue the writ of *habeas corpus*.

How put in; recognizance, form of.

SEC. 499. Bail is put in by a written recognizance, executed by two sufficient sureties, (with or without the defendant, in the discretion of the court or magistrate,) and acknowledged before the court or magistrate in substantially the following form:

AN ORDER having been made on the —— day of—— A. D. 18—, by A. B., a [state the judge and court] of ——, [or as the case may be], that C. D. be held to answer upon a charge of (stating briefly the nature of the offense), upon which he has been duly admitted to bail in the sum of —— dollars.

We, E, F., and G. H., [stating their place of residence], hereby undertake that the above named C. D., shall appear and answer the charge above mentioned, in whatever court it may be prosecuted, and shall at all times render himself amenable to the orders and processes of the court, and, if convicted, shall appear for judgment, and render himself in execution thereof, or if he fail to perform either of those conditions, that we will pay to the people of the United States of the Territory of Idaho, the sum of—— dollars, [inserting the sum in which the defendant is admitted to bail.]

Qualification of; justification of.

SEC. 500. The qualifications of bail are as follows:

First—Each of them must be a resident within the Territory; but the court or magistrate may refuse to accept any person as a bail who is not a resident of the county where the bail is offered.

Second—They must each be worth the amount specified in the recognizance, exclusive of property exempt from execution; but the court or magistrate, on taking bail, may allow more than two bail to justify severally in amounts less than that expressed in the recognizance, if the whole justification be equivalent to that of two sufficient bail.

Bail shall justify by affidavit.

SEC. 501. The bail shall, in all cases, justify by affidavit, taken before the court or magistrate, as the case may be. The affidavit must state that they each possess the qualifications provided in section 500.

Court shall examine as to sufficiency.

SEC. 502. The court or magistrate may thereupon further examine the bail, upon oath, concerning their sufficiency, in such a manner as the court or magistrate may deem proper.

On indictment before conviction.

SEC. 503. When the offense charged in the indictment is not capital, the officer serving the bench warrant shall, if required, take the defendant before a magistrate in the county in which it is issued, or in which he is arrested, for the purpose of giving bail, as prescribed in sections 261 and 264.

Offense capital defendant to be delivered into custody.

SEC. 504. If the offense charged in the indictment be capital, the officer arresting the defendant shall deliver him into custody according to the command of the bench warrant, as prescribed in section 255.

Shall be held by sheriff, unless writ of *habeas corpus.*

SEC. 505. Where the defendant is so delivered into custody he shall be held by the sheriff, unless admitted to bail on examination, upon a writ of *habeas corpus.*

Bail how put in; recognizance, form of.

SEC. 506. The bail must be put in by a written undertaking executed by two sufficient sureties, (with or without the defendant, in the discretion of the court or magistrate), and acknowledged before the court or magistrate, in substantially the following form:

AN INDICTMENT having been found on the —— day of ——, A. D. eighteen hundred and ——, in the court of the district of —— [as the case may be,] charging A. B. with the crime of (designating it generally), and he having been duly admitted to bail in the sum of —— dollars.

We, C. D. and E. F. [stating their place of residence,] hereby undertake that the above named A. B. shall appear and answer the indictment above mentioned in whatever court it may be prosecuted, and shall at all times render himself amenable to the orders and processes of the court, and if convicted, shall appear for judgment, and render himself in execution thereof; or, if he fail to perform either of these conditions, that we will pay to the people of the United States, of the Territory of Idaho, the sum of —— dollars [inserting the sum in which the defendant is held to bail].

Qualifications and justifications of.

SEC. 507. The provisions contained in sections 500 and 502, both inclusive, in relation to bail, shall apply to the qualifications of the bail, and to all the proceedings respecting the putting in and justifying of bail and incident thereto.

Bail on appeal, order for. SEC. 508. In the cases in which the defendant may be admitted to bail, upon an appeal, as provided in section 495, the order admitting him to bail may be made by any magistrate having the power to issue a writ of *habeas corpus*.

Notice of application for. SEC. 509. When the admission to bail is a matter of discretion, the court, or officer by whom it may be ordered, shall require such notice of the application therefor as he may deem reasonable, to be given to the district attorney of the county in which the verdict or judgment was originally rendered.

Qualifications and recognizance. SEC. 510. The bail must possess the qualifications, and must be put in all respects as above provided, except that the above condition of recognizance shall be to the effect that the defendant will in all respects abide the orders and judgment of the appellate court upon the appeal.

Deposit, in lieu of bail. SEC. 511. The defendant, at any time after an order admitting him to bail, may deposit with the clerk of the court in which he is held to answer the sum mentioned in the order; and upon delivering to the officer in whose custody he is, a certificate of the deposit, he shall be discharged from custody. This may be done instead of giving bail.

Dedosit, in exoneration of bail. SEC. 512. If the defendant has given bail, he may at any time before the forfeiture of the recognizance, in like manner deposit the sum mentioned in the recognizance, and upon the deposit being made, the bail shall be oxonerated.

How deposit applied. SEC. 513. When money has been deposited, if it remain on deposit at the time of a judgment for the payment of a fine, the clerk shall, under the direction of the court apply the money in satisfaction thereof; and after satisfying the fine and costs, shall refund the surplus, if any, to the defendant.

Bail may surrender defendant. SEC. 514. At any time before the forfeiture of the recognizance, the bail may surrender the defendant in their exoneration, or he may surrender himself to the officer to whose control he was committed at the time of giving bail, in the following manner:

How bail may surrender defendant and be exonerated. SEC. 515. A certified copy of the recognizance of bail shall be delivered to the officer who shall detain the defendant in his custody thereon as upon a commitment, and shall, by a certificate in writing, acknowbledge the surrender

Second—Upon a recognizance and a certificate of the officer, the court in which the action is pending may, upon notice of five days to the district attorney of the district, with a copy of the recognizance and certificate, order that the bail be exonerated; and on filing the order and the papers used on the application, they shall be exonerated accordingly.

Bail may arrest defendant.

SEC. 516. For the purpose of surrendering the defendant, the bail at any time before they are finally discharged, and at any place within the Territory, may themselves arrest him, or by a written authority, endorsed on a certified copy of the recognizance, may empower any person of suitable age and discretion to do so.

Surrender and deposit.

SEC. 517. If money has been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, shall surrender himself to the officer to whom the commitment was directed, in the manner provided in the last two sections, the court shall order a return of the deposit to the defendant, upon producing the certificate to the officer showing the surrender, and upon a notice of five days to the district attorney, with a copy of the certificate.

When deposit or recognizance forfeited.

SEC. 518. If, without sufficient excuse, the defendant neglect to appear for arraignment, or for trial or judgment, or upon any other occasion when his presence may be lawfully required, or to surrender himself in execution of the judgment, the court shall direct the fact to be entered upon its minutes, and the recognizance or the money deposited instead of bail, as the case may be, shall thereupon be declared forfeited.

Discharge of forfeiture

SEC. 519. If at any time before the final adjournment of the court the defendant appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the recognizance or the deposit to be discharged, upon such terms as may be just.

Action on recognizance.

SEC. 520. If the forfeiture be not discharged, as provided in the last section, the district attorney may, at any time after the adjournment of the court, proceed by action only against the bail upon their recognizance.

Payment of deposit to county treasurer.

SEC. 521. If, by reason of the neglect of the defendant to appear, as provided in section 518, money deposited instead of bail is forfeited, and the forfeiture be not discharged or remitted, as provided in section 519, the clerk with whom it is deposited shall, immediately after the final adjournment of the court, pay over the money deposited, to the county treasurer.

When defendant may be recommitted after bail.

SEC. 522. The court to which the committing magistrate shall return the depositions and statement, or in which an indictment or an appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order to be entered on the minutes, direct the arrest of the defendant and his commitment to the officer to whose custody he was committed at the time of giving bail, and his detention until legally discharged, in the following cases:

First—When by reason of his failure to appear, he has incurred a forfeiture of his bail, or of money deposited instead thereof, as provided in section 518.

Second—When it satisfactorily appears to the court that his bail, or either of them, are dead, or insufficient, or have removed from the Territory.

Third—Upon an indictment being found in the cases provided in section 265.

Order for recommitment what to contain.

SEC. 523. The order for the recommitment of the defendant shall recite generally the facts upon which it is founded, and shall direct that the defendant be arrested by any sheriff, constable, marshal or policeman within the Territory, and committed to the custody of the sheriff of the county where the depositions and statement were returned, or the indictment was found, or the conviction was had, as the case may be, to be detained until legally discharged.

Arrest on such order.

SEC. 524. The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county in the same manner as upon a warrant of arrest, except that when arrested in another county, the order need not be endorsed by a magistrate of that county.

Committed, when.

SEC. 525. If the order recite, as the grounds upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed accordingly to the requirement of the order.

Amount of bail to be specified.

SEC. 526. If the order be made for any other cause, and the offense be bailable, the court may fix the amount of bail, and may cause a direction to be inserted in the order, that the defendant be admitted to bail in the sum affixed, which shall be specified in the order.

Who may take bail in such cases.

SEC. 527. When the defendant is admitted to bail, the bail may be taken by any magistrate in the county having authority in a similar case to admit to bail upon the holding of the defendant to answer before indictment, as provided in section 498, or by any other magistrate to be designated by the court.

Form of recognizance on complaint.

SEC. 528. When bail is taken upon the recommitment of the defendant, the recognizance shall be in substantially the following form:

An Order having been made on the—— day of ——, A. D., 18——, by the court of [naming it], that A. B. is admitted to bail in the sum of —— dollars, in an action pending in that court against him in behalf of the people of the United States of the Territory of Idaho, upon an [information, presentment, indictment, or appeal, as the case may be].

We, C. D. and E. F. of [stating their place of residence], hereby undertake that the above named A. B. shall appear in that or any other court in which his appearance may be lawfully required upon that [information, presentment, indictment or appeal, as the case may be], and shall at all times render himself amenable to its orders and process, and appear for judgment, and surrender himself in execution thereof; or if he fail to perform either of these conditions that we will pay to the people of the United States of the Territory of Idaho, the sum of —— dollars, [inserting the sum in which the defendant is admitted to bail].

Sec. 529. The bail must possess the qualifications, and must be put in all respects in the manner heretofore prescribed. Qualifications of bail.

CHAPTER XII.

Compelling Witnesses to Attend.

530. Subpœna, what is.
531. Who may issue, in what cases.
532. Same.
533. Same.
534. Clerk shall issue blank subpœnas.
535. Form of.
536. Duces tecum, form of.
537. How served.
538. Same.
539. Payment of witnesses.
540. Treasurer to pay on presentation of certified order.
541. Attendance of witness out of county.
542. Disobedience to subpœna, how punished.
543. Recognizances how forfeited.
544. Disobedience of subpœna issued by defendant.

Sec. 530. The process by which the attendance of a witness before a court or magistrate is required, is a subpœna. Subp what

Sec. 531. A magistrate before whom an information is laid may issue subpœnas, subscribed by him for witnesses within the Territory, either on behalf of the people or of the defendant. Whc issu Wha me.

SEC. 532. The district attorney may issue subpœnas, subscribed by him, for witnesses within the Territory, in support of the prosecution, or for such other witnesses as the grand jury may direct to appear before the grand jury, upon any investigation pending before them.

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SEC. 533. The district attorney may, in like manner, issue subpœnas, subscribed by him, for witnesses within the Territory in support of an indictment, to appear before the court at which it is to be tried.

erk shall sue blank bpoenas.

SEC. 534. The clerk of the court at which an indictment is to be tried, shall, at all times, upon the application of the defendant, and without charge, issue as many blank subpœnas, subscribed by him as clerk, for witnesses within the Territory, as may be required by the defendant.

rm of.

SEC. 535. A subpœna authorized by the last four sections shall be substantially in the following form:

THE TERRITORY OF IDAHO, }
County of ——— }

The People of the United States of the Territory of Idaho, to A. B:

You are commanded, To appear before C. D., a justice of the peace of——— township, in——— county [or, the court of———, as the case may be], at [naming the place,] on [state the day and hour,] as a witness in a criminal action, presented by the people of the United States of the Territory of Idaho, against E. F.

Given under my hand this day of———, A. D., 18—, G. H., Justice of the Peace, [or J. B., District Attorney, or by order of the court, L. M., clerk, as the case may be].

ces am, form

SEC. 536. If books, papers or documents be required, a direction to the following effect shall be contained in the subpœna:

And you are required also to bring with you the following [describe intelligibly the books, papers or documents required].

w ved.

SEC. 537. A peace officer must serve within his county any subpœna delivered to him for service, either on the part of the people, or of the defendant, and must make a written return of the service, subscribed by him, stating the time and place of service, without delay.

ie.

SEC. 538. The service of a subpœna shall be by showing the original to the witness personally, and informing him of the contents.

ment of nesses.

SEC. 539. When a person shall attend before a magistrate, grand jury or court, as a witness on behalf of the people, upon a subpœna, or by virtue of a recognizance, and it shall appear that he has come from any place out of the county, or that he is poor, the court, if the attendance of the witness be upon a trial by an order upon its minutes, or in any other case, the district or probate judge, by an order subscribed by him, may direct the treasurer of the county to pay the witness a reasonable sum, to be specified in the order, for his expenses.

Treasurer to pay on presentation of certified order.

SEC. 540. Upon the production of the order, or a certified copy thereof, the county treasurer shall pay to the witness the sum specified therein out of the county treasury.

Attendance of witness out of county.

SEC. 541. No person shall be obliged to attend as a witness before any court or judge out of the district where the witness resides, or is served with the subpœna, unless a judge of a court in which the offense is triable, or a justice of the Supreme Court, or a probate judge, upon an affidavit of the district attorney or prosecutor, or of the defendant or his counsel, stating that he believes the evidence of the witness is material, and his attendance at the examination or trial necessary, shall endorse on the subpœna an order for the attendance of the witness.

Disobedience to subpœna, how punished.

SEC. 542. Disobedience to a subpœna, or a refusal to be sworn or to answer as a witness, may be punished by the court or magistrate as a contempt.

Recognizances, how forfeited.

SEC. 543. When a witness has entered into a recognizance to appear, as provided in section 166, upon his failure so to do, his recognizance shall be forfeited, in the same manner as recognizances of bail.

Disobedience of subpœna issued by defendant.

SEC. 544. A witness disobeying a subpœna, issued on the part of a defendant, shall also forfeit to the defendant the sum of one hundred dollars, which may be recovered in a civil action, unless good cause can be shown for his non-attendance.

CHAPTER XIII.

Testimony Taken by Commission.

SECTION 545. Defendant's witnesses examined before or after indictment.
546. When defendant's witnesses may be examined on commission.
547. Commission, what is.
548. Who may be commissioner.
549. Application what to show.
550. When and to whom made.
551. Order for, when to be granted.

SECTION 552. Stay of proceedings.
553. Notice and interrogatories to be served on district attorney.
554. Cross-interrogatories.
555. What may be inserted.
556. Allowance of interrogatories.
557. Direction as to return of commission.
558. Commission, how executed.
559. What to be annexed.
560. Return of commission.
561. Same.
562. Filing commission and return.
563. When by mail.
564. Commission and return open for inspection.
565. Depositions evidence for either party.

Defendant's witnesses examined before or after indictment.

SEC. 545. When a defendant has been held to answer a charge for a public offense, he may, either before or after indictment, have witnesses examined on his behalf as prescribed in this act, and not otherwise.

Defendant's witnesses, when may be examined on commission

SEC. 546. When a material witness for the defendant is about to leave the Territory, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally on a commission.

Commission, what is.

SEC. 547. A commission is a process issued under the seal of the court and the signature of the clerk, directed to some person designated as commissioner, authorizing him to examine the witness, upon oath, on interrogations annexed thereto, to take and certify the deposition of the witness, and return it according to the directions given in the commission.

Who may be commissioner.

SEC. 548. The commissioner shall be either a district judge, probate judge, county clerk or notary public of the district to which the commission is issued.

Application what to show.

SEC. 549. The application must be made upon affidavit, showing—

First—The nature of the offense charged.

Second—The state of the proceedings in the action.

Third—The name of the witness, and that his testimony is material to the defense of the action.

Fourth—That the witness is about to leave the Territory, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial.

When and to whom made.

SEC. 550. The application may be made to the court during the term, or to the judge in vacation, and must be upon three days' notice to the district attorney.

Order for, when to be granted.

SEC. 551. If the court or judge to whom the application is made be satisfied of the truth of the facts stated, and that the examination of the witness is necessary to the attainment of justice, an order shall be made that a commission be issued to take his testimony.

Stay of proceedings.

SEC. 552. If the application for commission be granted, the court or judge may insert in the order therefor a direction that the trial of the indictment be stayed for a specified time, reasonably sufficient for the execution and return of the commission.

Notice and interrogatories to be served on district attorney.

SEC. 553. When the commission is ordered, the defendant must serve upon the district attorney, without delay, a copy of the interrogatories to be annexed thereto, with two days' notice of the time at which they will be presented to the court or judge.

Cross-interrogatories.

SEC. 554. The district attorney may, in like manner, serve upon the defendant, or his counsel, cross-interrogatories, to be annexed to the commission, with like notice.

What may be inserted.

SEC. 555. In the interrogatories either party may insert any question pertinent to the issue.

Allowance of interrogatories.

SEC. 556. When the interrogatories and cross-interrogatories are presented to the court or judge, according to the notice given, the court or judge shall modify the questions so as to conform them to the rules of evidence, and shall endorse upon them his allowance, and annex them to the commission.

Direction as to return of commission.

SEC. 557. Unless the parties otherwise consent by an endorsement on the commission, the court or judge shall endorse thereon a direction as to the manner in which it shall be returned; and may, in its discretion, direct that it be returned by mail, or otherwise, addressed to the clerk of the court in which the action is pending.

Commission, how executed.

SEC. 558. The commissioner, unless otherwise specially directed, may execute the commission as follows:

First—He shall publicly administer an oath to the witness that his answers given to the interrogatories shall be the truth, the whole truth, and nothing but the truth.

Second—He shall cause the examination of the witness to be reduced to writing.

Third—He shall write the answers of the witness as near as possible in the language he gives them, and shall read to them each answer as it is taken down, and correct or add to it until it is made conformable to what he declares is the truth.

Fourth—If a witness decline answering a question, that fact, with the reason for which he declines answering it, as he gives it, must be stated.

Fifth—If any papers or documents are produced before him, and proved by the witness, they shall be annexed to his deposition, and be subscribed by the witness, and certified by the commissioner.

Sixth—The commissioner shall subscribe his name to each sheet of the deposition, and annex the deposition with the papers and documents proved by the witness to the commissioner, and must close up, under seal, and address the same as directed on the commission.

Seventh—If there be a direction on the commission to return it by mail, the commissioner shall immediately deposit it in the nearest post-office. If any other direction be made by the written consent of the parties, or by the court or judge on the commission, as to its return, he must comply with the direction.

What to be annexed.

SEC. 559. A copy of the last section must be annexed to the commission.

Return of commission.

SEC. 560. If the commission and return be delivered by the commissioner to an agent, he must deliver the same to the clerk to whom it is directed, or to the judge of the court in which the indictment is pending, by whom it may be received and opened, upon the agent making affidavit that he received it from the hand of the commissioner, and that it has not been opened or altered since he received it.

Same.

SEC. 561. If the agent be dead, or from sickness or other casualty unable personally to deliver the commission and return, as prescribed in the last section, it may be received by the clerk or judge from any other person, upon his making an affidavit that he received it from the agent; that the agent is dead, or from sickness or other casualty unable to deliver it; that it has not been opened or altered since the person making the affidavit received it, and that he believes that it has not been opened or altered since it came from the hand of the commissioner.

Filing commission and return.

SEC. 562. The clerk or judge receiving and opening the commission and return must immediately file it, with the affidavit mentioned in the last two sections, in the office of the clerk of the court in which the indictment is pending.

When by mail.

SEC. 563. If the commission and return be transmitted by mail, the clerk to whom it is addressed must receive it from the post-office, and open and file it in his office, where it shall remain, unless the court otherwise direct.

Commission and return open for inspection.

SEC. 564. The commission and return shall at all times be open to the inspection of the parties, who shall be furnished by the clerk with copies of the same, or of such part thereof as they may require, on payment of his fees.

Depositions evidence for either party

SEC. 565. The depositions taken under the commission may be read in evidence by the defendant on the trial, upon it being shown that the witness is unable to attend from any cause whatever, and the same objections may be taken to any questions in the interrogatories, or to any answer in the deposition, as if the witness had been examined orally in the court.

CHAPTER XIV.

Inquiring into the Insanity of the Defendant Before Trial or After Conviction.

SECTION 565. Insanity excuses crime.
567. Inquiry into defendant's sanity.
568. Trial or judgment suspended.
569. Insanity, how tried.
570. Charge to jury on trial of.
571. Defendant found sane.
572. Found insane; proceedings.
573 Bail, exoneration of.
574. Returning to sanity; proceedings.
575. Expense of keeping defendant, to whom chargeable.

Insanity excuses crime.

SEC. 566. An act done by a person in a state of insanity cannot be punished as a public offense; nor can a person be tried, adjudged to punishment, or punished for a public offense while he is insane.

Inquiry into defendant's sanity.

SEC. 567. When an indictment is called for trial, or, upon conviction, the defendant is brought up for judgment, if a doubt shall arise as to the sanity of the defendant, the court shall order the question to be submitted to the regular jury, or may order a jury to be summoned, as prescribed in section 453, to inquire into the fact.

Trial or judgment suspended.

SEC. 568. The trial of the indictment, or the pronouncing of the judgment (as the case may be), shall be suspended until the question of insanity shall be determined by the verdict of the jury.

Insanity, how tried.

SEC. 569. The trial of the question of insanity shall proceed in the following order:

First—The counsel for the defendant shall open the case, and offer evidence in support of the allegation of insanity.

Second—The counsel for the people shall open their case, and offer evidence in support thereof.

Third—The parties may then respectively offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original cause.

Fourth—When the evidence is concluded, unless the case is submitted to the jury on either or both sides without argument, the counsel for the people must commence, and the defendant, or his counsel, may conclude the argument to the jury.

Fifth—If the indictment be for an offense punishable with death, two counsel on each side may argue the case to the jury, in which case they must do so alternately. In other cases, the argument may be restricted to one counsel on each side.

Sixth—The court shall then charge the jury, if requested by either party.

Charge to jury on trial of. SEC. 570. The provisions of section 383 in respect to the charge of the court to the jury, upon the trial of an indictment, shall apply to the trial of the question of insanity.

Defendant found sane. SEC. 571. If the jury find that the defendant is sane, the trial of the indictment shall proceed, or judgment may be pronounced, as the case may be.

Found insane; proceedings. SEC. 572. If the jury find that the defendant is insane, the trial or judgment shall be suspended until he become sane; and the court, if it deem his discharge dangerous to the public peace or safety, may order that he be in the meantime committed by the sheriff to the custody of some proper person, and that, upon his becoming sane, he be re-delivered by such person to the sheriff.

Bail, exoneration of. SEC. 573. The commitment of the defendant, as mentioned in the last section, shall exonerate any bail he may have given, and shall entitle any person authorized to receive the property of the defendant to a return of any money he may have deposited instead of bail.

Returning to sanity; proceedings. SEC. 574. If the defendant be received by the person so appointed, he must be detained by him until he becomes sane. When he becomes sane, such person shall give notice to the sheriff and district attorney of the county of that fact. The sheriff shall thereupon, without delay, take the defendant from the custody of such person, and place him in proper custody until he be brought to trial or judgment, as the case may be, or be otherwise legally discharged.

Expense of keeping defendant, to whom chargeable. SEC. 575. The expense of placing the defendant in the custody of such proper person, of keeping him and bringing him back, shall, in the first instance, be chargeable to the county in which the indictment was found; but the county may recover them from the estate of the defendant, if he have any, or from any relative, town, city or county bound to provide for and maintain him elsewhere.

CHAPTER XV.

Dismissal of the Action Before or After the Indictment for Want of Prosecution, or Otherwise.

SECTION 576. Prosecution, when dismissed.
577. Indictment, when to be dismissed.
578. Continuance of action.
579. Discharge of defendant.
580. Dismissal of action.
581. Discontinuance by district attorney.
582. Dismissal bar to another proceeding.

Prosecution, when dismissed. SEC. 576. When a person has been held to answer for a public offense, if an indictment be not found against him at the next term of the court at which he is held to answer, the court shall order the prosecution to be dismissed, unless good cause to the contrary be shown.

Indictment, when to be dismissed. SEC. 577. If a defendant indicted for a public offense, whose trial has not been postponed upon his application, be not brought to trial at the next term of the court at which the indictment is triable, after the same is found, the court shall order the indictment to be dismissed, unless good cause to the contrary be shown.

Continuance of action. SEC. 578. If the defendant be not indicted or tried, as provided in the last two sections, and sufficient reason therefor be shown, the court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody, on his own recognizance, or on the recognizance of bail for his appearance to answer the charge at the time to which the action is continued.

Discharge of defendant. SEC. 579. If the court direct the action to be dismissed, the defendant shall, if in custody, be discharged therefrom; or if admitted to bail, his bail shall be exonerated, or money deposited instead of bail shall be refunded to him.

Dismissal of action. SEC. 580. The court may, either of its own motion or upon the application of the district attorney, and in furtherance of justice, order any action after indictment to be dismissed; but in such case the reason of the dismissal shall be set forth in the order, which must be entered on the minutes.

Discontinuance by district attorney.

Sec. 581. The district attorney shall not hereafter discontinue or abandon a prosecution for a public offense, except as provided in the last section.

Dismissal bar to another proceeding.

Sec. 382. An order for the dismissal of the action, as provided in this act, shall be a bar to another prosecution for the same offense, if it be a misdemeanor; but it shall not be a bar if the offense charged be a felony.

CHAPTER XVI.

Proceedings Against Corporations.

Section 583. Upon presentment against a corporation, magistrate must issue summons.
584. Summons, form of.
585. When and how served.
586. Examination of the charge.
587. Certificate of the magistrate, and return thereof.
588. If the magistrate certify that there is sufficient cause, grand jury to investigate.
589. Appearance and plea.
590. Fine on conviction, how collected.

Upon presentment against a corporation magistrate must issue summons.

Sec. 583. Upon an information or presentment against a corporation, the magistrate must issue a summons, signed by him, with his name of office, requiring the corporation to appear before him, at a specified time and place, to answer the charge, the time to be not less than ten days after the issuing of the summons.

Summons, form of.

Sec. 584. The summons must be substantially in the following form:

THE TERRITORY OF IDAHO, }
County of ——— }

The People of the United States in the Territory of Idaho to [naming the corporation]:

YOU ARE HEREBY SUMMONED, To appear before me at [naming the place], on [specifying the day and hour], to answer a charge made against you upon the information of A. B. [or the presentment of the grand jury of the county, as the case may be], for [designating the offense generally].

DATED at the [naming the place], of ———
this ——— day of ———, 18——

G. H. [Name the court or officer].

SEC. 585. The summons must be served at least five days before the day of appearance fixed therein by delivering a copy thereof and showing the original to the president, or other head of the corporation, or to the secretary, cashier, or managing agent thereof. When and how served.

SEC. 586. At the appointed time in the summons the magistrate must proceed to investigate the charge in the same manner as in the case of a natural person, so far as these proceedings are applicable. Examination of the charge.

SEC. 587. After hearing the proofs, the magistrate must certify upon the depositions either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the deposition and certificate to the clerk of the district court in which the case would be tried and from which court the summons had issued. Certificate of magistrate and return thereof

SEC. 588. If the magistrate returns a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the grand jury may proceed thereon as in case of a natural person held to answer. If magistrate certify there is sufficient cause grand jury to investigate.

SEC. 589. If an indictment is found, the corporation may appear by counsel to answer the same. If it does not thus appear, a plea of "not guilty" must be entered, and the same proceedings had thereon as in other cases. Appearance and plea.

SEC. 590. When a fine is imposed upon a corporation on conviction, it may be collected, by virtue of the order imposing it, by the sheriff of the county out of its real and personal property, in the same manner as upon an execution in a civil action. Fine on conviction, how collected.

CHAPTER XVII.

Entitling Affidavits.

SECTION 591 Affidavits defectively entitled, valid.

SEC. 591. It shall not be necessary to entitle an affidavit or deposition in the action—whether taken before or after indictment, or upon an appeal; but if made without a title, or with an erroneous title, it shall be as valid and effectual for every purpose as if it were duly entitled, if it intelligibly allude to the proceeding, indictment, or appeal in which it is made. Affidavits defectively entitled, valid.

CHAPTER XVIII.

Errors and Mistakes in Pleadings and Other Proceedings.

SECTION 592. When not material.

When not material.

SEC. 592. Neither a departure from the form and mode prescribed by this act in respect to any pleadings or proceedings, nor an error or mistake therein, shall render the same invalid, unless it have actually prejudiced the defendant, or tended to his prejudice, in respect to a substantial right.

CHAPTER XIX.

Disposal of Property Stolen or Embezzled.

SECTION 593. When it comes into custody of the officer, he must hold it subject to the order of the magistrate.
594. Order for its delivery to owner.
595. When it comes into custody of magistrate, he must deliver it to owner.
596. Court in which trial is had may order its delivery.
597. If not claimed in six months, to be delivered to county treasurer.
598. Receipt by officers for money, etc., taken from a person arrested for a public offense.

When it comes into custody of officer, he must hold it subject to order of magistrate.

SEC. 593. When property alleged to have been stolen or embezzled shall come into the custody of a peace officer, he shall hold the same subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

Order for its delivery to owner.

SEC. 594. On satisfactory proof of the title of the owner of the property, the magistrate to whom the information is laid, or who shall examine the charges against the person accused of stealing or embezzling the property, may order it to be delivered to the owner, on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order shall entitle the owner to demand and receive the property.

When it comes into custody of magistrate, he must deliver it to owner.

SEC. 595. If the property stolen or embezzled come into the custody of the magistrate, it shall be delivered to the owner, on satisfactory proof of his title and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

Court in which trial is had may order its delivery.

SEC. 596. If the property stolen or embezzled have not been delivered to the owner, the court before which a conviction is had for stealing or embezzling it, may, on proof of his title, order it to be restored to the owner.

If not claimed in six months, to be delivered to county treasurer.

SEC. 597. If the property stolen or embezzled be not claimed by the owner before the expiration of six months from the conviction of a person for stealing or embezzling it, the magistrate or other officer having it in custody shall, on payment of the necessary expenses incurred for its preservation, deliver it to the county treasurer, by whom it shall be sold, and the proceeds paid into the county treasury.

Receipt by officers for money, etc., taken from a person arrested for a public offense.

SEC. 598. When money or other property is taken from a defendant arrested upon a charge of a public offense, the officer taking it shall at the time give duplicate receipts therefor, specifying particularly the amount of money and the kind of property taken; one of which receipts he shall deliver to the defendant, and the other of which he shall forthwith file with the clerk of the court, to which the deposition and statement must be sent, as provided by section 172.

CHAPTER XX.

Proceedings in the Probate and Justices' Courts in Criminal Cases.

SECTION 599. How commenced.
600. Examination of complaint.
601. Warrant of arrest; form of.
602. Pleadings.
603. Defendant must be personally present. entitled to jury trial.
604. Docket, how kept.
605. Challenge to jurors.
606. Peremptory challenges, number of.
607. By consent of jury, may be less than twelve.
608. Oath to jurors.
609. Jury to hear proof in public.
610. Deliberation of jury.
611. Verdict to be general.
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613. Second trial, when had.
614. Judgment, what it may be.

SECTION 615. Judgment to pay fine; may direct imprisonment.
616. Acquittal; malicious prosecution.
617. When judgment against prosecutor.
618. Entry of verdict.
619. Rendition of judgment.
620. Motion for new trial.
621. When granted.
622. Arrest of judgment, on what founded.
623 Pronouncing judgment.
624. Discharge of defendant.
625. Judgment of imprisonment.
626. Upon payment of fine, defendant to be discharged; fine, how applied.
627. Same.
628. If defendant on bail fail to appear, application of money on deposit.
629. Proceedings when defendant fails to appear for judgment.

How commenced.

SEC. 599. All proceedings and actions before the probate and justices' courts in this Territory for a public offense of which said courts have jurisdiction shall be commenced by complaint setting forth the offense charged, with particulars of time, place, person and property, so as to enable the defendant to understand distinctly the character of the offense complained of and to answer the complaint.

Examination of complaint.

SEC. 600. When the complaint is laid before a judge of the probate court or a justice of the peace of the commission of a public offense of which the said courts have jurisdiction, he must examine on oath the complainant or prosecutor and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the party making them.

Warrant of arrest.

SEC. 601. If the judge of the probate court or the justice of the peace be satisfied therefrom that the offense complained of has been committed, he shall issue a warrant of arrest, which shall be substantially in the following form:

Form of.

TERRITORY OF IDAHO, }
County of ——— }

The people of the United States of the Territory of Idaho, to any Sheriff, Constable, Marshal or Policeman in this Territory:

COMPLAINT, upon oath, having this day been made before me [here name the judge or justice and the court], by C. D., that the offense of [designating it generally] has been committed, and accusing E. F. thereof;

You are therefore commanded, Forthwith to arrest the above named E. F., and bring him before me forthwith at [naming the place].

SEAL

WITNESS My hand and seal, at ——— this ——— day of ——— A. D. 18——

A. B., [Name the officer and court].

Pleadings:

SEC. 602. On being arrested the defendant shall be required to plead to the complaint or answer, unless he shall present to the court a motion setting forth good and sufficient grounds for the dismissal of the action. Such plea, answer or motion may be oral or in writing, except that when the proceedings be in the probate court, the plea, answer and motion, as aforesaid, shall be in writing. Immediately after such plea, answer or motion, the court shall proceed to try the case, unless, for good cause shown, an adjournment be granted. If an adjournment be granted, the defendant shall remain in the custody of the sheriff or officer, unless the court make an order admitting the defendant to bail.

Defendant must be personally present: entitled to jury trial.

SEC. 603. The defendant must in all cases be personally present before the trial shall proceed, and shall be entitled, if he demand, a trial by a jury of twelve unbiased and intelligent persons, citizens of the United States, and who shall have resided in the Territory for a period of four months, and in the county thirty days next preceding the time of service as such juror.

Docket, how kept.

SEC. 604. A docket shall be kept by the judge of said probate court, or the clerk thereof, and by the justice of the peace, in which shall be entered each action and the minutes of the proceedings of the court therein.

Challenges to jurors.

SEC. 605. Challenges may be taken by either party to the panel of jurors, or to any individual juror, for cause or bias; which shall in all instances be determined by the court.

Peremptory challenge, number of.

SEC. 606. In the trial for an offense of which the said courts have jurisdiction, the defendant shall be entitled to four peremptory challenges and the people to three.

By consent, jury may be less than twelve.

SEC. 607. A less number than twelve jurors may try the case, if the defendant elects so to do, and such consent is made in open court and entered in the docket of said court; and the verdict of such jury shall be as valid as if rendered by a full panel.

Oath to jurors.

SEC. 608. The court shall administer to the jury the following oath or affirmation:

> You do swear [or affirm, as the case may be] that you will well and truly try this issue between the people of the United States of the Territory of Idaho and A., B., the defendant, and a true verdict give according to the evidence.

Jury to hear proof in public.

SEC. 609. After the jury are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public and in the presence of the defendant. The court shall decide all questions of law which may arise in the course of the trial, but shall give no charge with respect to matters of fact.

Deliberation of jury.

SEC. 610. After hearing the proofs and allegations, the jury may decide in court or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect:

You do swear that you will keep the jury together in some private and convenient place; that you will not permit any person to speak to them, nor speak to them yourself, unless it be to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed."

Verdict to be general.

SEC. 611. When the jury have agreed upon their verdict, which must in all cases be general, they shall deliver it publicly to the court, who shall cause the same to be entered on the minutes.

Against part of defendants.

SEC. 612. When several defendants are tried together, if the jury cannot agree as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly, and the case as to the rest may be tried by another jury, unless, upon good and sufficient cause shown to the satisfaction of the court, the further proceedings be dismissed and the defendant or defendants be discharged. The jury shall not be discharged after the cause is submitted to them until they have agreed upon and rendered their verdict, unless for good cause the court sooner discharge them.

Jury not to discharged.

Second trial when had.

SEC. 613. If the jury be discharged, as provided in the last section, the court may proceed again to the trial in the same manner as upon the first trial, and so on until a verdict be rendered.

Judgment, what it may be.

SEC. 614. When the defendant pleads guilty, or is convicted either by the court or by a jury, the court shall render judgment thereon of fine or imprisonment, or both, as the case may require.

Judgment to pay fine; may direct imprisonment.

SEC. 615. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be paid or satisfied; or may, instead of ordering imprisonment, direct that an execution issue forthwith against the property of the defendant to satisfy the amount of said fine and costs of prosecution.

Acquittal; malicious prosecution

SEC. 616. When the defendant is acquitted either by the court or by the jury, he shall be immediately discharged; and if the court certify in the minutes that the prosecution was malicious or without probable cause, it may order the prosecutor to pay the costs of the action or to give satisfactory security by a written undertaking, with one or more sureties, to pay the same to the county within thirty days after the trial.

When judgment against prosecutor.

SEC. 617. If the prosecutor do not pay the costs, or give security therefor, as provided in the last section, the court may enter judgment against him for the amount thereof, which may be enforced in all respects in the same manner as a judgment in a civil action.

Entry of verdict.

SEC. 618. When a verdict is rendered, it shall be immediately examined by the court, and if in proper form, shall be entered upon the minutes of the court by the judge or clerk of the court, or by the justice of the peace.

Rendition of judgment.

SEC. 619. After a plea or verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquittal, the court shall appoint a time for rendering judgment, which shall not be more than two days nor less than six hours after the verdict is rendered, and shall hold the defendant to bail to appear for judgment, and in default of bail, he shall be committed.

Motion for new trial.

SEC. 620. At any time before the judgment is entered the defendant may move for a new trial, or in arrest of judgment.

When granted.

SEC. 621. A new trial can be granted only in the following cases:

First—If the trial has been had in his absence.

Second—When the jury has received any evidence out of court.

Third—When the jury have separated without leave of the court after retiring to deliberate upon their verdict, or been guilty of any misconduct tending to prevent a fair and due consideration of the case.

Fourth—When their verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors.

Fifth—When the verdict is contrary to law and evidence; but not more than one new trial shall be granted for this cause alone.

Arrest of judgment, on what founded.

SEC. 622. The motion in arrest of judgment may be founded on any substantial defect in the complaint, and the effect of an arrest of judgment is to place the defendant in the same situation in which he was before the trial was had.

Pronouncing judgment.

SEC. 623. If the judgment be not arrested, or a new trial granted, judgment shall be pronounced at the time appointed and entered in the minutes of the court.

Discharge of defendant.

SEC. 624. If judgment of acquittal be given, or judgment imposing a fine only, and the defendant be not detained for any other legal cause, he must be discharged as soon as the judgment is given.

Judgment of imprisonment.

SEC. 625. When a judgment of imprisonment is entered, a certified copy thereof shall be delivered to the sheriff, marshal or other officer, which shall be a sufficient warrant for the execution of the same.

Upon payment of fine, defendant to be discharged; fine, how applied.

SEC. 626. Upon the payment of a fine imposed by the court, the officer shall immediately discharge the defendant, if he be not detained for any other legal cause, and the money so collected shall first be applied to the payment of the expenses of the prosecution, and the residue, if any, shall be paid into the county school fund of the county where such prosecution was had.

Same.

SEC. 627. If a fine be imposed and paid before commitment, it shall be applied as prescribed in the preceding section.

If defendant on bail fail to appear, application of money on deposit.

SEC. 628. If a defendant be discharged on bail, or has deposited money instead thereof, and fails to appear according to his recognizance, the same shall be forfeited, and the money shall first be applied to the costs of court, and the residue, if any, paid to the county school fund of the county where the recognizance was taken.

Proceedings when defendant fails to appear for judgment.

SEC. 629. In case of failure to appear for judgment, the court shall issue a warrant for the arrest of the defendant, and shall enter judgment whenever the defendant appears or is brought before it.

CHAPTER XXI.

Search Warrant.

SECTION 630. Search warrant, definition of.
631. When may be issued.
632. When not to be issued.
633. Magistrate must examine complainant on oath.
634. What deposition must set forth.
635. When and how issued.
636. Form of.
637. How served.
638. If refused admittance, officer may break open door, etc.
639. May break open door, etc., to liberate.
640. Magistrate must insert direction in warrant, etc.
641. When to be executed and returned.
642. Property taken must be receipted for.
643. When property delivered to magistrate, how disposed of.
644. Return of warrant and delivery of inventory of property taken.
645. Copy of inventory, to whom delivered.

SECTION 646. Proceedings if grounds of warrant are controverted.
647. Testimony reduced to writing, etc.
648. When property to be restored.
649. Papers to be returned to next term of court.
650 When magistrate may direct defendant to be searched.

Search warrant, definition of.

SEC. 630. A search warrant is an order in writing, in the name of the people of the United States of the Territory of Idaho, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, or implements used, or evidence of crime, and bring it before the magistrate.

When may be issued.

SEC. 631. It may be issued whenever property has been stolen or embezzled, in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of any person by whom it was stolen or embezzled, or of any other person in whose possession it may be:

When not to be issued.

SEC. 632. No search warrant shall be issued but upon probable cause, supported by affidavit naming and describing the person, and particularly describing the property and place to be searched.

Magistrate must examine complainant on oath.

SEC. 633. The magistrate must, before issuing the warrant, examine on oath the complainant and any witness he may produce, and take their depositions in writing, and cause them to be subscribed by the party making them.

What deposition must set forth.

SEC. 634. The depositions must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist.

When and how issued.

SEC. 635. If the magistrate be satisfied of the existence of the grounds of the application, or that there is probable cause to believe in their existence, he shall issue a search warrant, signed by him, with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named for the property specified, and to bring it before the magistrate.

Form of.

SEC. 636. The warrant shall be in substantially the following form:

THE TERRITORY OF IDAHO, }
County of ——— }

The People of the United States in the Territory of Idaho to any Sheriff, Constable, Marshal, or Policeman in the County of ———

PROOF BY AFFIDAVIT having been this day made before me by [naming every person whose affidavit has been taken] that [stating the grounds of the application, according to section 632; or, if the affidavit be not positive, that there is probable cause for believing that [stating the grounds of the application in the same manner];

You are therefore commanded, In the day time [or at any time of the day or night, as the case may be, according to section 642], to make immediate search on the person of C. D. [or in the house situated ——— describing it, or any other place to be searched, with reasonable particularity, as the case may be], for the following property [describing it with reasonable particularity]; and if you find the same, or any part thereof, to bring it forthwith before me at [state the place].

GIVEN under my hand, and dated this ——— day of ——— A. D. 18——

E. F., *Justice of the Peace.*
[*Or as the case may be.*]

How served

SEC. 637. A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

If refused admittance, officer may break open door, etc.

SEC. 638. The officer may break open any outer or inner door or window of a house, or any part of the house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he be refused admittance.

May break open door, etc., to liberate.

SEC. 369. He may break open any outer or inner door or window of a house for the purpose of liberating a person who, having entered to aid him in the execution of his warrant, is detained therein, or when necessary for his own liberation.

Magistrate must insert direction in warrant, etc

SEC. 640. The magistrate must insert a direction in the warrant that it be served in the daytime, unless the affidavits be positive that the property is on the person or in the place to be searched, in which case he may insert a direction that it may be served at any time of the day or night.

When to be executed and returned.

SEC. 641. A search warrant must be executed and returned to the magistrate who issued it within five days after its date; and if in any other county, within thirty days. After the expiration of these times respectively, the warrant shall, if not executed, be void.

Property taken must be receipted for.

SEC. 642. When the officer shall have taken any property under the warrant, he must give a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him or in whose possession it was found; or, in the absence of any person, he shall leave it in the place where he found the property.

When property delivered to magistrate, how disposed of

SEC. 643. When the property is delivered to the magistrate, he shall, if it was stolen or embezzled, dispose of it as provided in sections 593 to section 597, both inclusive.

SEC. 644. The officer shall forthwith return the warrant to the magistrate, and at the same time deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken and of the applicant for the warrant, if they be present, verified by the affidavit of the officer at the foot of the inventory, and taken before the magistrate at the time, to the following effect:

Return of warrant and delivery of inventory of property taken.

I, R. S., the officer by whom the annexed warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant.

SEC. 645. The magistrate shall thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant.

Copy of inventory, to whom delivered.

SEC. 646. If the grounds on which the warrant was issued be controverted, he must proceed to take testimony in relation thereto.

Proceedings if grounds of warrant are controverted.

SEC. 647. The testimony given by each witness must be reduced to writing and certified by the magistrate.

Testimony reduced to writing, etc.

SEC. 648. If it appear that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate shall cause it to be restored to the person from whom it was taken.

When property to be restored.

SEC. 649. The magistrate shall annex together the depositions, the search warrant and return, and the inventory, and return them to the next term of the court having power to inquire into the offense in respect to which the search warrant was issued at or before its opening on the first day.

Papers to be returned to next term of court.

SEC. 650. When a person charged with a felony is supposed by the magistrate before whom he is brought to have on his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order or the order of the court in which the defendant may be tried.

When magistrate may direct defendant to be searched

CHAPTER XXII.

Proceedings against Fugitives from Justice.

SECTION 651. Rewards for the apprehension of fugitives from justice.
652. Fugitives to be delivered up.
653. Magistrate to issue warrant.
654. Proceedings for arrest and commitment.
655. When and for what time to be committed.
656. Bail.
657. District attorney to be notified.
658. Duty of the district attorney.
659. Person arrested when to be discharged.
660. Magistrate shall return proceedings.

Rewards for the apprehension of fugitives from justice

SEC. 651. The Governor may offer a reward, not exceeding one thousand dollars, payable out of the prison fund—and if no prison fund, then out of the general fund—for the apprehension—

First—Of any convict who has escaped from the Territorial prison; or,

Second—Of any person who has committed, or is charged with the commission of an offense punishable with death.

Fugitives to be delivered up.

SEC. 652. A person charged in any State or Territory of the United States with treason, felony or other crime, who shall flee from justice and be found in this Territory, shall, on demand of the executive authority of the State or Territory from which he fled, be delivered up by the Governor of this Territory, to be removed to the State or Territory having jurisdiction of the crime.

Magistrate to issue warrant.

SEC. 653. A magistrate may issue a warrant for the apprehension of a person so charged who shall flee from justice and be found in this Territory.

Proceedings for arrest and commitment.

SEC. 654. The proceedings for the arrest and commitment of the person charged shall be in all respects similar to those provided in this act for the arrest and commitment of a person charged with a public offense committed within this Territory, except that an exemplified copy of an indictment found, or other judicial proceedings had against him in the State or Territory in which he is charged to have committed the offense, may be received as evidence before the magistrate.

When and for what time to be committed.

SEC. 655. If from the examination it appear that the person charged has committed treason, felony, or other crime charged, the magistrate, by warrant reciting the accusation, shall commit him to the proper custody within his county, for a time to be specified in the warrant, which the magistrate may deem reasonable, to enable the arrest of the fugitive under the warrant of the executive of this Territory, on the requisition of the executive authority of the State or Territory in which he committed the offense, unless he give bail, as prescribed in the next section, or until he be legally discharged.

Sec. 656. The magistrate may admit the person arrested to bail by recognizance, with sufficient sureties, and in such sum as he may deem proper, for his appearance before him at a time specified in the recognizance, and for his surrender to be arrested upon the warrant of the Governor of this Territory. Bail.

Sec. 657. Immediately upon the arrest of the person charged, the magistrate shall give notice to the district attorney of the district of the name of the person and the cause of the arrest. District attorney to be notified.

Sec. 658. The district attorney shall immediately thereafter give notice to the Executive authority of the State or Territory, or the prosecuting attorney, or presiding judge of the criminal court of the city or county within the State or Territory having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person charged. Duty of the district attorney.

Sec. 659. The person arrested shall be discharged from custody or bail, unless before the expiration of the time designated in the warrant or recognizance he be arrested under the warrant of the Governor of this Territory. Person arrested when to be discharged.

Sec. 660. The magistrate shall make return of his proceedings to the next district court of the county, which shall thereupon inquire into the cause of the arrest and detention of the person charged; and if he be in custody, or the time of his arrest have not elapsed, the court may discharge him from detention, or may order his recognizance of bail to be canceled, or may continue his detention for a longer time, or may re-admit him to bail to appear and surrender himself within a time to be specified in the recognizance. Magistrate shall return proceedings.

CHAPTER XXIII.

Compromising Offenses.

Section 661. When offense may be compromised.
662. Compromise to be by permission of court.
663. Order thereon, bar.
664. No public offense to be compromised except as herein provided.

When offense may be compromised.

SEC. 661. When a defendant is held to answer on a charge of a misdemeanor for which the person injured, by the act constituting the offense, has a remedy by a civil action, the offense may be compromised, as provided in the next section, except when it was committed:

First—By or upon an officer of justice while in the execution of the duties of his office.

Second—Riotously.

Third—With an intent to commit a felony.

Compromise to be by permission of court.

SEC. 662. If the party injured appear before the court to which the depositions are required to be returned at any time before trial, and acknowledge, in writing, that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all the proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but in such case, the reason for the order must be set forth therein and entered on the minutes.

Order thereon, bar.

SEC. 663. The order authorized by the last section shall be a bar to another prosecution for the same offense.

No public offense to be compromised except as herein provided.

SEC. 664. No public offense shall be compromised, nor shall any proceeding for the prosecution or punishment thereof upon a compromise be stayed, except as provided in this act.

CHAPTER XXIV.

Fines and Forfeitures.

SECTION 665. How applied.
666. Officer failing to pay over fine collected shall be liable on official bond, and deemed guilty of misdemeanor.

How applied.

SEC. 665. All fines and forfeitures collected in any court of this Territory shall be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred; and after such costs are paid, the residue shall be paid to the county treasurer of the county in which the court is held.

Officer failing to pay over fine collected shall be liable on official bond and deemed guilty of misdemeanor.

SEC. 666. If any clerk, justice of the peace, sheriff, constable, or other officer who may receive any fine or forfeiture, shall refuse or neglect to pay over the same according to law, and within thirty days after the receipt thereof, he shall be liable, upon his official bond, for the amount thereof, with fifty per cent. damages and interest, to be recovered in like manner as for failing to pay over money received on execution, and shall be deemed guilty of a misdemeanor; and, on conviction, may be fined in any sum not exceeding five hundred dollars, or be imprisoned not exceeding three months.

CHAPTER XXV.

Promiscuous Provisions.

667. Oath what to include.
668. Signature what sufficient.
669. Persons in prison, how brought before court.
670. Process, how executed.
671. Term "magistrate," what signifies; "peace officer," what signifies.
672. Costs, when action removed before trial.
673. Clerk to certify amount of costs.
674. The superseding of any law, when not to constitute a bar.
675. Fees of officers, how collected.

Sec. 667. The term "oath," when used in this act, shall be deemed to include an affirmation. **Oath, what to include.**

Sec. 668. When a signature of a person is required by this act, the mark of the person, if he cannot write, shall be deemed sufficient—the name of the person making the mark being written near it, and the mark being witnessed by a person who writes his own name as a witness. **Signature, what sufficient.**

Sec. 669. When it is necessary for any purpose to have a person who is in prison in any part of the Territory brought before a court of criminal jurisdiction, an order for that purpose may be made by the court, and the order shall be executed by the sheriff of the county where it is made. **Persons in prison, how brought before court.**

Sec. 670. Process issued by a court or magistrate shall be executed according to its terms. **Process, how executed.**

Sec. 671. The term "magistrate," when used in this act, signifies any one of the officers mentioned in section 102. The term "peace officer," when used in this act, signifies any one of the officers mentioned in section 108. **Magistrate, what signifies.** **Peace officer, what signifies.**

Sec. 672. In any case where a criminal action may have been or shall be removed before trial, the costs accruing upon such removal and trial shall be a charge against the county in which the cause of indictment occurred. **Costs when action removed before trial.**

Clerk to certify amount of costs.

SEC. 673. The clerk of the court in the county to which such action is or may be removed shall certify the amount of said costs to the auditor of his county, which shall be examimed, allowed and paid as other county charges.

The superseding of any law, when not to constitute a bar.

SEC. 674. That the superseding of any law creating a criminal offense, shall not be held to constitute a bar to the indictment and punishment of a crime already committed, or to bar the trial and punishment of a crime where an indictment has been already found, in violation of the law so superseded, unless the intrusion to bar such indictment and punishment—or trial and punishment, where an indictment has been already found—is expressly found declared in the superseding act.

Fees of officers, how collected.

SEC. 675. The fees allowable to justices of the peace, and other officers having the jurisdiction and authority of justices of the peace, clerks, peace officers and district attorneys shall, when the defendant is convicted, be considered and recovered against him as costs in the suit, and be collected in like manner as costs in civil cases.

APPROVED, *January* 14, 1875.

AN ACT

CONCERNING THE WRIT OF *HABEAS CORPUS.*

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

Section 1. Who may prosecute writ of *habeas corpus.*
2. Application for writ, how made.
3. Who may grant writ.
4. Writ to be granted without delay.
5. To whom writ is to be directed.
6. When writ directed to sheriff.
7. When directed to any other person.
8. Service of writ.
9. Refusing to obey writ.
10. What to be stated in return to writ.
11. Party in custody to be brought up.
12. Exceptions.
13. When court may proceed in absence of the party.
14. Hearing to take place immediately after return.
15. Facts stated in the return may be controverted.
16. Court to hear proofs.
17. May compel attendance of witnesses.
18. When court may discharge the party.
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20. Discharge, grounds of.
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38. Penalty for attempting to evade this act.
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Who may prosecute writ of *habeas corpus*.

SECTION 1. Every person unlawfully committed, detained, confined, or restrained of his liberty, under any pretense whatever, may prosecute a writ of *habeas corpus* to inquire into the cause of such imprisonment.

Application for writ, how made.

SEC. 2. Application for such writ shall be made by petition, signed either by the party for whose relief it is intended or by some person in his or her behalf, and shall specify—

First—That the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty, the officer or person by whom he or she is so confined or restrained, and the place where; naming all the parties, if they are known; or describing them, if they are unknown.

Second—If the imprisonment be alleged to be illegal, the petition must also state in what the alleged illegality consists.

Third—The petition must be verified by the oath or affirmation of the party making the application.

Who may grant writ.

SEC. 3. Such writ of *habeas corpus* may be granted by any judge of the Supreme Court or district courts at any time in term or vacation.

Writ to be granted without delay.

SEC. 4. Any judge empowered to grant a writ applied for under this act, if it appear that the writ ought to issue, shall grant the same without delay.

To whom writ is to be directed.

SEC. 5. Such writ shall be directed to the officer or party having such prisoner in custody or under restraint, commanding him or them (as the case may be) to have the body of such person so imprisoned or detained, as is alleged by the petition, before the judge forthwith, (specifying in such writ the place where the petition will be heard), to do and receive what shall then and there be considered concerning such person, together with the time and cause of his or her detention, and have then and there such writ.

When writ directed to sheriff.

SEC. 6. If such writ be directed to the sheriff or other ministerial officer, it shall be delivered by the clerk of the court presided over by the judge issuing said writ to such officer without delay.

Sec. 7. If such writ be directed to any person other than is specified in the last preceding section, the same shall be delivered to the sheriff, or his deputy, and shall be by him served upon such person by delivering the same to him without delay.

When directed to any other person.

Sec. 8. If the officer or person to whom such writ is directed cannot be found, or shall refuse admittance to the officer or person serving or delivering such writ, the same may be served or delivered by leaving it at the residence of the officer or person to whom it is directed, or by affixing the same on some conspicuous place on the outside of his dwelling-house, or the place where the party is confined or under restraint. The service of said writ is made by serving a copy and exhibiting the original; and where the posting is required, by posting a copy.

Service of writ.

Sec. 9. If the officer or person to whom such writ is directed shall refuse—after due service, as aforesaid—to obey the same, it shall be the duty of the judge, upon affidavit, to issue an attachment against such person, directed to the sheriff—or if the sheriff be the defendant, to an elisor appointed for that purpose by the judge—commanding him forthwith to apprehend such person and bring him immediately before such judge; and upon being so brought, he shall be committed to the common jail of the county until he make due return of such writ, or be otherwise legally discharged.

Refusing to obey writ.

Sec. 10. The party upon whom such writ shall be duly served shall state in his return, plainly and unequivocally—

What to be stated in return to writ

First—Whether he have, or have not, the party in his control, or under his power or restraint.

Second—If he have the party in his custody or power, or under his restraint, he shall also state the authority and cause of such imprisonment or restraint, setting forth the same at large.

Third—If the party be determined, by virtue of any writ or warrant, or any other written authority, a copy thereof shall be annexed to the return, and the original shall be produced and exhibited to the judge on the hearing of such return.

Fourth—If the officer or person upon whom such writ shall have been served shall have had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ of *habeas corpus*, but such officer or person has transferred such custody or restraint to another, the return shall state particularly to whom, at what time and place, for what cause and by what authority such transfer took place.

Fifth—The return must be signed by the person making the same, and, except when such person shall be a sworn officer and shall make such return in his official capacity, it shall be verified by his oath or affirmation.

Party in custody to be brought up.

SEC. 11. If the writ of *habeas corpus* be served, the person or officer to whom the same is directed shall also bring the body of the party in his custody or restraint, according to the command of the writ, except in the case specified in the next two sections.

Exceptions.

SEC. 12. Whenever, from sickness or infirmity of the person directed to be produced by any writ of *habeas corpus*, such person cannot, without danger, be brought before the judge, the officer or person in whose custody or power he or she is, may state the fact in his return to to the writ verrifying the same by affidavit.

When court may proceed in absence of the party.

SEC. 13. If the judge be satisfied of the truth of such allegation of sickness or infirmity, and the return to the writ is otherwise sufficient, such judge may proceed to decide on such return and to dispose of the matter as if such party had been produced on the writ, or the hearing thereof may be adjourned until such party can be produced.

Hearing to take place immediately after return.

SEC. 14. The judge before whom a writ of *habeas copus* shall be returned, shall, immediately after the return thereof, proceed to hear and examine the return, and such other matter as may be properly submitted to his hearing and consideration.

Facts stated in the return may be controverted.

SEC. 15. The party brought before the judge on the return of the writ, may deny or controvert any of the material facts or matters set forth in the return, or except to the sufficiency thereof, or allege any fact to show either that his or her imprisonment or detention is unlawful, or that he or she is entitled to his or her discharge.

Court to hear proofs.

SEC. 16. Such judge shall thereupon proceed in a summary way to hear such allegation and proof as may be produced against such imprisonment or detention, or in favor of the same, and to dispose of such party as the law and justice of the case may require.

May compel attendance of witnesses.

SEC. 17. Such judge shall have full power and authority to require and compel the attendance of witnesses by process of subpœna and attachment, and to do and perform all other acts and things necessary to a full and fair hearing and determination of the cause.

When court may discharge the party.

SEC. 18. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, such judge shall discharge such party from the custody or restraint under which he or she is held.

When party to be remanded.

SEC. 19. It shall be the duty of such judge, if the time during which such party may be legally detained in custody has not expired, to remand such party if it shall appear that he is detained in custody by virtue of the final judgment or decree of any competent court of criminal jurisdiction, or upon any process issued upon such judgment or decree, or in cases of contempt of court.

Discharge, grounds of

SEC. 20. If it appear on the return of the writ of *habeas corpus* that the prisoner is in custody by virtue of the process from any court in this Territory, or judge or officer thereof, such prisoner may be discharged in any of the following cases, subject to the restrictions of the last preceding section.

First—When the jurisdiction of such court or officer has been exceeded.

Second—When the imprisonment was at first lawful, yet, by some act, omission, or event which has taken place afterwards, the party has become entitled to be discharged.

Third—When the process is defective in some matter of substance required by law, rendering such process void.

Fourth—When the process, though proper in form, has been in a case not allowed by law.

Fifth—When the person having the custody of the prisoner is not the person allowed by law to detain him.

Sixth—Where the imprisonment or restraint is not authorized by any judgment, order, or decree of any court, nor by any provisions by law.

Seventh—When a party has been committed on a criminal charge without reasonable or probable cause.

Party not to be discharged for defect of form in warrant.

SEC. 21. If any person be committed to prison or be in custody of any officer, on any criminal charge, by virtue of any warrant or commitment of a justice of the peace, such person shall not be discharged from such imprisonment or custody on the ground of any defect of form in such warrant or commitment.

Court may examine witnesses and discharge or hold to bail.

SEC. 22. If it shall appear to the judge by affidavit, or upon the hearing of the matter, or otherwise, or upon the inspection of the process or warrant of commitment and such other papers in the proceedings as may be shown to such judge, that the party is guilty of a criminal offense and ought not to be discharged, such judge, although the charge be defectively or unsubstantially set forth in such process or warrant of commitment, shall cause the complainant or other necessary witnesses to be subpœnaed to attend at such time as shall be ordered, to testify before such judge; and upon the examination he shall discharge such prisoner, let him or her to bail (if the offense be bailable); or re-commit him or her to custody, as may be just and legal.

Habeas corpus for the purpose of giving bail.

SEC. 23. Whenever any person may be imprisoned or detained in custody on any criminal charge, for want of bail, such person shall be entitled to a writ of *habeas corpus* for the purpose of giving bail; upon averring that fact in his petition, without alleging that he or she is illegally confined.

Recognizance from person brought up.

SEC. 24. Any judge before whom any person who has been committed on a criminal charge, shall be brought on a writ of *habeas corpus*, if the same be liable, may take a recognizance from such person, as in other cases, and shall file the same in the proper court without delay.

Person to be remanded, when.

SEC. 25. If any person brought before the judge on the return of the writ be not entitled to his discharge, and be not bailed, where such bail is allowable, such judge shall remand him or her to custody, or place him or her under the restraint from which he or she was taken, if the person under whose custody or restraint he or she was, be legally entitled thereto.

Party in illegal custody may be committed to legal custody.

SEC. 26. In cases where any party is held under illegal restraint or custody, or any other person is entitled to the restraint or custody of such party, such judge may order such party to be committed to the restraint or custody of such person as is by law entitled thereto.

Disposition of party pending ceedings.

SEC. 27. Until judgment be given on the return, the judge before whom any party may be brought on such writ may commit him or her to the custody of the sheriff of the county, or place him or her in such care or under such custody as his or her age or circumstances may require.

Habeas corpus not to be disobeyed for defect of form.

SEC. 28. No writ of *habeas corpus* shall be disobeyed for defect of form, if it sufficiently appear therefrom in whose custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining him or her. and the judge before whom he or she is to be brought.

Imprisonment after discharge.

SEC. 29. No person who has been discharged by the order of the judge upon a *habeas corpus*, issued pursuant to the provisions of this act, shall be again imprisoned, restrained or kept in custody for the same cause, except in the following cases:

First—If he or she shall have been discharged from custody, on a criminal charge, and be afterwards committed for the same offense, by legal order or process.

Second—If after a discharge for defect of proof, or for any defect of the process, warrant or commitment in a criminal case, the prisoner may be again arrested, on sufficient proof and committed by legal process for the same offense.

Warrant may be issued instead of *habeas corpus* in certain cases.

SEC. 30. Whenever it shall appear, by satisfactory proof by affidavit, to any judge authorized by law to grant a writ of *habeas corpus*, that any one is illegally held in custody, confinement or restraint, and that there is good reason to believe that such person or persons will be carried out of the jurisdiction of the judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ of *habeas corpus* can be enforced, said judge may cause a warrant to be issued, reciting the facts, and directed to the sheriff or any constable of the county, commanding such officer to take such person thus held in custody, confinement or restraint, and bring him or them forthwith before such judge, to be dealt with according to law.

Warrant may include person charged with illegal detention.

SEC. 31. Such judge may also, if the same be deemed necessary, insert in such warrant a command for the apprehension of the person, charged with such illegal detention and restraint.

Execution of warrant.

SEC. 32. The officer to whom such warrant is delivered shall execute the same by bringing the person or persons named before the judge who may have directed the issuing of such warrant.

Return to warrant.

SEC. 33. The person alleged to have such party under illegal confinement or restraint may make return to such warrant, as in the case of a writ of *habeas corpus*, and the same may be denied, and like allegations, proofs and trial shall be had thereon, as upon the return to a writ of *habeas corpus*.

Party may be discharged or remanded.

SEC. 34. If such party be held under illegal restraint or custody, he or she shall be discharged; and if not, he or she shall be restored to the custody of the person entitled thereto, or left at liberty as the case may require.

Process may be executed on Sunday.

SEC. 35. Any writ or process authorized by this act may be issued and served on the first day of the week, commonly called Sunday, or any other non-judicial day.

Writs to be issued by clerk.

SEC. 36. All writs, warrants, processes and subpœnas authorized by the provisions of this act, shall be issued by the clerk of the court, and [except subpœnas] sealed with the seal of the court, and shall be served and returned forthwith, unless the judge shall specify a particular time for any such return.

Judge improperly refusing *habeas corpus.*

SEC. 37. If any judge, after a proper application is made, shall refuse to grant an order for a writ of *habeas corpus*, or if the officer or person to whom such writ may be directed shall refuse obedience to the command thereof, he or she shall forfeit and pay to the person aggrieved a sum not exceeding five thousand dollars—to be recovered by an action of debt, in any court having cognizance thereof.

Penalty for attempting to evade this act

SEC. 38. Any person having in his custody or under his restraint or power any person for whose relief a writ of *habeas corpus* shall have been duly issued, pursuant to the provisions of this act who, with the intent to elude the service of such writ or to avoid the effect thereof, shall transfer such person to the custody of another, or shall place him or her under the power or control of another, or shall conceal or exchange the place of his or her confinement or restraint, or shall remove him or her without the jurisdiction of such judge, shall be deemed guilty of a misdemeanor, and, upon conviction thereof shall be fined in any sum not exceeding five thousand dollars, nor less than one thousand dollars.

Assisting to evade act. Additional penalty.

SEC. 39. Every person who shall knowingly aid or assist in the commission of any offense specified in the last preceding section shall be deemed guilty of a misdemeanor, and punished as in the last preceding section.

SEC. 40. Every person convicted of any offense under the provisions of the last preceding sections in addition to the punishment therein mentioned, may be also imprisoned in the county jail for a term not exceeding two years.

APPROVED *January* 13, 1875.

AN ACT

TO PROVIDE A UNIFORM SYSTEM OF TERRITORIAL AND COUNTY REVENUE, AND FOR THE ASSESSING AND COLLECTING THE SAME.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Tax Levy.
2. Annual levy.
3. Tax liens.
5. Real and personal property defined.
6. Assessor's bond.
7. Deputies.
11. Time of assessment.
12. Assessment of real estate.
14. Copartnership property and estates.
15. Penalty for false lists.
18. Assessment roll.
20. Property not listed.
21. Compensation of assessor,
22, Board of equalization.
23. Duties of auditor.
24. Oath and bond of tax collector.
27. Duties of tax collector.
29. Notice to be given.
31. Return to auditor.
32. To pay over to treasurer.
34. Delinquent taxes.
35. Delinquent returns.
36. Duties of District Attorney.
37. Form of complaint.
38. Summons to issue.
39. Answer of defendant.
41, Costs and liens.
42. Proceedings in civil cases applicable.

SECTION 43. Compensation of district attorney.
44. Duties of district attorney.
46. Recorder to be auditor.
47. Bonds of auditor.
48. Pay of auditor.
50. Duties of auditor.
53. Licenses.
54. Reports to controller.
55. Reports to commissioners.
56 Taxes on mortgage debts.
58. Poll taxes, who liable.
59. Poll tax blanks.
62. Collector charged with.
64. Proof of payment of.
66. How payment of enforced.
68. Penalty for false name.
70. Collector to report to auditor.
71. Auditor to report to controller.
72. Billiards, theatres and shows, license;
73. Pedlers and hawkers.
74. Time licenses run.
75. Liquor licenses.
76. Distilleries license.
77. Clasification of persons for license.
78. Bankers and brokers license.
80. Bankers classified.
81. Blank licenses.
84. Duties of collector as to licenses.
85. Auditor to give collector licenses.
86. License may be paid to treasurer.
87. Auditor to report to controller.
88. Gambling licenses.
89. Penalty attached.
90. Shall go to school fund.
93. Treasurers duties,
94. Settlement of treasurer.
95. Allowances to be certified.
96. Pay of treasurer.
97. Penalties for neglect.
98. Settlement of officers with auditor.
99. Embezzlement.
100. Books to be open for inspection.
101. Property in transitu.
102. Illegal assessments.
103. Duties of assesor in return to,
104. Pay of collector.
105. Collection of taxes by precinct.
106. Repeal of acts.

Tax to be levied.

SECTION. 1. An annual *ad valorem* tax of seventy-five cents upon each one hundred dollars value of taxable property for Territorial purposes upon the assessed value of all property in this Territory, not by this act exempted from taxation, is hereby levied and directed to be collected and paid; and upon the same property the Board of Commissioners of each county is also hereby authorized and empowered to levy and collect annually a tax for county expenditures not exceeding one hundred and fifty cents on each one hundred dollars; and upon the same property the Board of Commissioners of each county is also hereby authorized and empowered to levy and collect annually such additional and special taxes as the laws of this Territory may authorize or require them to levy and collect.

Levy to be recorded.

Provided, however, That, whenever the Board of Commissioners levy any tax, they shall cause such levy to be entered on the record of their proceedings, and shall direct their clerk to deliver a certified copy thereof, to the assessor, tax collector, auditor and treasurer, each of whom shall file said copy in his office.

Annual assessment.

SEC. 2. The Board of County Commissioners of each county shall, at their regular meeting in April, unless otherwise provided by special act, annually assess the amount of taxes that shall be levied for county purposes, dessignating the number of cents which shall on each one hundred dollars of taxable property, real or personal, be levied for each purpose, and shall add thereto the amount levied by law on each one hundred dollars of taxable property, real or personal, for either Territorial or county purposes. All taxes levied under the provisions of this act, shall be paid in the lawful money of the United States; *Provided, however*, That nothing in this act shall be construed so as to prohibit any county, city or town, from levying and collecting general or special taxes in accordance with the provisions of its charter, or of any special act. The Board of Commissioners of each county shall, prior to the first Monday in April each year, cause to be prepared suitable and well bound books for the use of the assessor, in which he shall enter the tax list or assessment roll as hereinafter provided. Said books shall contain suitable printed or written heads, and be ruled to conform with the form of the assessment roll as provided by this act.

Books to be prepared.

SEC. 3. Every tax levied under the provisions or authority of this act is hereby made a lien against the the property assessed, which lien shall attach on the first Monday in April in each year, on all property then in this Territory, and on all other property whenever it reaches the Territory, and shall not be satisfied or removed until the taxes are all paid, or the property has absolutely vested in a purchaser under a sale for taxes.

Provided, That where property, both real or personal is assessed to any person, firm, corporation or company, the whole amount of the tax so levied and assessed shall be and is hereby made a lien upon the real property of such persons, firm, corporations or company.

Real property. Sec. 4. All property in this Territory shall be taxed as real or personal property. The term real property, as used in this act, shall include lands and all unmovable property thereon. The term personal property, as used in this act, shall include all property except real property. All property in this Territory shall be subject to taxation, except—

Lands exempt. *First*—All lands and lots of ground with buildings, improvements and structures thereon, belonging to the Territory, and all lands belonging to the United States or to this Territory, and all buildings and improvements belonging to the United States or to this Territory.

Public buildings exempt. *Second*—Court houses, jails, town halls, houses occupied by fire and military companies, and their apparatus, and other public structures and edifices, and all squares and lots kept open for health or public use, or for ornament, belonging to any county, city, town or village in this Territory, public libraries, colleges, school houses and other buildings for the purposes of education, with their furniture, libraries and all other equipments, and the lots and lands thereto appurtenant and used therewith, so long as the same shall be used for that purpose; *provided*, that when any of the property mentioned in this subdivision is private property, from which a rent or other valuable consideration is received for its use, the same shall be taxed as other property.

Same. *Third*—Public hospitals, asylums, poor houses, and other charitable or benevolent institutions for the relief of the indigent or afflicted, and the lots or lands thereto appurtenant, with all their furniture and equipments, all grounds and buildings belonging to agricultural societies, so long as the same shall be used for that purpose only, and without pecuniary gain.

Churches exempt. *Fourth*—Churches, Chapels and other buildings for religious worship, with their furniture and equipments, and the lots of ground appurtenant thereto and used therewith; *Provided*, The same shall be used for such purposes only, without yielding rent.

Buildings of benevolent orders exempt. *Fifth*—The buildings and lots of grounds appurtenant thereto and used therewith, owned and used by the Order of Free and Accepted Masons, The Independent Order of Odd Fellows, or by any benevolent or charitable society, except such buildings and lots of ground as are owned in connection with individual owners, then only to the extent owned by such orders or societies, cemeteries and grave yards, set apart and used for the purpose of interring the dead.

Property of widows and orphans exempt.

Sixth—The property of widows or orphan children, not to exceed the amount of one thousand dollars to any one family.

Exempt.

Seventh—Growing crops,

Capital stock, mining claims etc, exempt,

Eighth—Capital stock of incorporated companies, where the assessable property has been assessed—also mining claims: *provided*, that all machinery used in mining claims, and all property and improvements appurtenant to or upon mining claims which have an independent and separate value, shall be subject to taxation.

Tools exempt.

Ninth—Tools of mechanics, farming tools of husbandmen, libraries of professional men and private citizens, household furniture of families or householders, which do not exceed in value to each, the sum of fifty dollars, and tools of miners which do not exceed in value to each owner, the sum of fifty dollars.

Real estate defined.

SEC. 5. The term "real estate" whenever used in this act, shall be deemed and taken to mean and include, and it is hereby declared to mean and include, the ownership of, or claim to, or possession of, or right of possession to, any land within the Territory and the claim by or possession of any person, firm, corporation, association or company, to any land shall be listed under the head of real estate. The term " personal property " whenever used in this act, shall be deemed and taken to mean, and it is hereby declared to mean and include, all household and kitchen furniture, all law, medical and miscellaneous libraries, all goods, wares and merchandise; all chattels of every kind and description, all money on hand or on deposit in bank or banks, or with individuals, all moneys at interest, secured by mortgage or otherwise; gold dust, silver bars, bullion, solvent debts, other than those mentioned in this section, when the amount thereof exceeds the indebtedness due, or to become due, to residents of the Teritory, of the party assessed; stocks of goods on hand; horses, mules, oxen, cows, calves, beef cattle, hogs, sheep, goats, jacks and jennets, and cattle of every description; wagons, carriages, buggies, omnibuses, stages, stage-coaches, sulkies, carts, drays and all other vehicles, whether for use, or pleasure, or hire; all machines and all machinery, all works and improvements, all store-ships and hulks; all steamers, vessels and water craft of every description and name, either owned in whole or in part by a resident or residents of the Territory, or navigating the waters of any river or bay in the Territory, and having a general depot or terminus

Personal property defined.

within the Territory, all capital loaned, invested or employed in any trade, commerce or business whatever, the capital stock of all corporations, companies, associations, firms or individuals doing business, or having an office in the Territory, the money, property and effects of every kind, except real estate, of all banks, banking institutions or firms, bankers, money lenders and brokers, all houses, buildings, fences, structures, erections or other improvements, built or erected upon any land, whether such land be private property, or the property of the Territory, or of the United States, or any municipal corporation, or county in the Territory, and all property of whatever kind or nature not included in the term "real estate" as said term is defined in this act, including—the stockholders of every national bank and banking association located in this Territory, organized and doing business under the provisions of an act of Congress, entitled "An Act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, A. D. 1864, and the several acts amendatory thereof and supplementary thereto or of any bank incorporated under the laws of this Territory, shall be assessed and taxed on the value of their shares of stock therein in the county where such bank is located, whether the stockholders reside in such place or not, such shares shall be listed and assessed with regard to the ownership thereof, subject however, to the restriction that taxation of such shares shall not be at a greater rate than is assessed on any other monied capital in the hands of individual citizens of this Territory in the place where such bank is located. The shares of capital stock of National Banks, not located in this Territory, held in this Territory, shall not be required to be listed under the provisions of this act. Each National Bank shall furnish to the assessor, a full and correct list of the names and residence of its stock holders, and the number of shares held by each, and the assessor shall report the same to the county auditor in his assessment return. The taxes against such shares shall be levied against the holder of the same in the list of personal property, and shall be paid by the bank.

Banks.

Nothing in this act contained shall exempt the real estate of such banking association, or national bank from either Territorial, county or municipal taxes, to the same extent according to its value, as other real estate is taxed.

Bond of assessor.

SEC. 6. Each county assessor, before entering upon the duties of his office, shall execute to the Territory of Idaho, a bond in the penal sum of three thousand dollars, with two or more sufficient sureties, to be approved by the County Commissioners; conditioned for the faithful performance of all the duties of his office required by law, which bond shall be filed and recorded with the county recorder, and shall take the oath of office prescribed by law, which shall be endorsed on his official bond.

Assessor may appoint deputy.

SEC. 7. Said assessor shall have the power of appointing one deputy assessor, and no more, except as tax collector, and as provided in section 25, of this act, to aid him in his official duties. The appointment shall be in writing and signed by the assessor, and shall be filed and recorded in the office of the county recorder. The assessor may revoke the appointment of any deputy at will, by writing, filed and recorded in the same office. Each deputy before entering upon his duties shall take the oath of office, which shall be endorsed upon his appointment. The assessor may take from each of his deputies a bond with sureties for the faithful performance of his duties; but the assessor personally shall be liable on his official bond for all acts of his deputy.

Penalty.

SEC. 8. If any assessor or deputy assessor shall be guilty of neglect of the duties enjoined on him by law, he shall be liable to indictment in any court of competent jurisdiction, and fined in any sum not exceeding five hundred dollars.

Suit on bond.

SEC. 9. Suit may be instituted on the assessor's bond in the manner provided by law, for the benefit of any person who may be aggrieved by the wrongful act or conduct of such assessor or his deputy.

May administer oaths.

SEC. 10. The assessor and his deputy are hereby authorized to administer all oaths and affirmations contemplated by law, in the discharge of their duties as such assessors.

Time of making assessments.

SEC. 11. Between the first Monday in April and the first Monday in August in each year, the county assessors, except otherwise required by special enactment, shall ascertain by diligent inquiry and examination, all property in his county, real or personal, subject to taxation, and also all persons, corporations, associations, companies, or firms owning, claiming or having the possession or control thereof, and he shall then determine the full and cash value of all such property, and shall list and assess the same to the person, firm, corporation, association, or company owning or having the possession, charge or control thereof, for the purpose of enabling the assessor to make such assessment, he shall demand from each person and firm, and from the president, cashier, treasurer or managing agent of such corporation, association, or company, within his county, a particular description, under oath or affirmation, of all the real estate within the county, owned, claimed by, or in the possession or control of such person, firm, corporation, association or company, also a complete statement under oath or affirmation, of all personal property within said county belonging to said person, firm, corporation, association or company, which statement shall be entered by the assessor in a book to be kept by him for that purpose, and shall be subscribed and sworn to in every case by the person making the same, if any person, officer or agent shall neglect or refuse on demand of the assessor or his deputy, to give under oath or affirmation a description and statement required by this section, or subscribe and swear to the same, the assessor shall make the description and statement as aforesaid, and shall make an estimate of the value of said property which such person, officer or agent neglected or refused to render under oath or affirmation and the value so fixed shall be doubled by the assessor, and shall not be reduced by the board of equalization. If the owner of any property not listed by any other person, shall be absent or unknown, the assessor shall make an estimate of the value of such property; if the name of the absent owner is known to the assessor the property shall be assessed in his, her or their name, if unknown to the assessor, the property shall be assessed to "unknown owners."

Assessment how made.

Assessment of real estate.

SEC. 12. At the same time and in the same manner as the other lists of property herein required or given, each and every person shall deliver under oath or affirmation, to the assessor a similar list of all the real estate with the improvements thereon, if any, and other personal property which he or the firm of which he is a member and the corporation, association or company of which he is president, cashier, treasurer, secretary, trustee or managing agent, owns, claims, or has charge, possession or control of in any other county of the Territory, which he does not of his personal knowledge know, has been assessed in such other county for that year, which list shall particularly describe each tract of land and each city or town lot contained therein, so that the same may be found and known by such description, and all vessels, steamers and other water craft, and shall also specify each and all deposits, if any, and persons with whom such deposit or deposits are made, and the place or places in which the same may be found, unless he shall have included all such money, gold dust, silver bars and bullion in the list of property in his county, which it shall be lawful to do, and shall also specify the kind and nature of all other personal property in such county belonging to or under the charge, control or in the possession of him or them.

Lists to be made.

SEC. 13 Every assessor as soon he shall have received a list of any property in another county under the foregoing section, shall make out from the lists delivered to him, a list for each county, in which any taxable property may be, and shall transmit the same by mail or express to the assessor of the proper county, who shall assess the same as other taxable property therein, if it has not been before assessed for the same year.

Copartnership property.

SEC. 14. The owner or holder of any stock in any firm, incorporated company or association, the entire capital of which is invested in property which is assessed, or the capital of which is assessed shall not be assessed individually for his stock in such company or association, nor shall any person having an interest in any partnership or firm, be individually assessed for the partnership or firm property, if such property is assessed to the partnership or firm, the property of every firm, incorporated company or association, shall be taxed in the county where the property is situated; *provided*, that whenever any portion of the property of any such company shall be assessed and taxed in the county wherein the same is located, then upon presentation at the principal office of such company of the certificate or receipt of the tax collector of said county, that such taxes have been paid in another county, the same shall be deducted at the principal office from the aggregate amount of taxes imposed upon or paid by said company for the same property in the county wherein the principal office of the said company is situated, the undivided property of deceased persons may be listed to the heirs, guardians. executors, or administrators as the case may be, and the payment of taxes made by either, shall bind all parties in interest for their equal proportions. It is hereby made the duty of every probate judge from time to time, to direct each and every administrator and executor, (which direction may be specially given in each case or by general order) to pay out of the funds of the estate, all taxes that have attached or accrued against such estate after the passage of this act, and no order or decree for the distribution of any property of any descendant among the heirs or devisees, shall be made until all taxes which have

Estates.

been attached to or accrued against the estate, shall have been paid.

Penalty for false lists.

SEC. 15. If any person shall willfully make or give under oath or affirmation, a false list of his, her or their taxable property, or a false list of taxable property under his, her or their control, such person shall be deemed guilty of perjury, and upon conviction thereof, shall be punished therefor, as is by law provided for the punishment of perjury.

Penalty for false name.

SEC. 16. If any person shall give the assessor or his deputy a false name or shall refuse to give his or her name, or shall refuse to give a list of property as is by this act required, or shall refuse to swear or affirm to such list, he or she shall be guilty of a misdemeanor, and shall be arrested upon complaint of the assessor or his deputy, and upon conviction before a justice of the peace, he or she shall be punished by a fine not less than ten dollars, nor more than five hundred dollars, or by imprisonment for a term of not less than three months, or by both such fine and imprisonment.

Neglect of assessor.

SEC. 17. The assessor and his sureties shall be and they are hereby made liable for the taxable property within the county, when through his neglect it remains unassessed, and it is hereby made the duty of the district attorney of such county to commence suit against such assessor, and his sureties for the amount of taxes due on property not assessed by him; *provided*, that such suit shall not be commenced until after the assessor shall have completed the assessment roll each year, and if any non-assessment was caused by the refusal of the owner, claimant or agent of such property, or if the person or persons having it in possession or under his or their control or charge, to give a list to the assessor, the assessor shall not be liable, but the person whose refusal to give the asssessor a list caused the omission, shall pay double the taxes imposed upon property regularly assessed.

Assessment roll what to contain.

SEC. 18. It shall be the duty of the assessor to prepare a tax list, or assessment roll, alphabetically arranged in the book or books furnished him by the Board of Commissioners for that purpose, in which book or books shall be listed or assessed all the real estate, improvements on real estate, improvements on public lands and all personal property within the limits of the county, and in said book or books he shall set down in separate columns.

First—The date of assessment.

Second—The names of the taxable inhabitants, firms, incorporated companies or associations, in alphabetical order, if known, if unknown the property shall be assessed to "unknown owners," and if any person shall refuse to make a statement of his property under oath as required by this act, that fact shall be noted under his name.

Third—All real estate and improvements taxable to each inhabitant, firm, incorporated company or association, described by metes and bounds or by common designation or name if situated within the limits of any city or incorporated town, describing by lots or fraction of lots, if without said limits, giving the number of acres as nearly as can be conveniently ascertained, and the location and township where situate, all improvements on public lands, describing as nearly as possible the location of such improvements; *provided*, that when two or more parties claim or give a description of the same land, it shall be assessed to each party making such claim, or giving such description, according to the estimated value of the claims of each.

Fourth—The cash value of real estate and improvements thereon.

Fifth—The cash value of all improvements on real estate when the same is assessed to a person other than the owner of said real estate.

Sixth—The cash value of all personal property except improvements on real estate or public lands taxable to each.

Seventh—The total value of all property taxable to each and no further description of personal property than that required by the foregoing provision of this section shall be needed or be requisite to render the assessment binding and effective.

Eighth—He shall also place in a separate column opposite the name of each person liable to pay a poll tax the figure one (1) the form of the assessment roll shall be substantially as follows:

ASSESSMENT ROLL of Property for the fiscal year ending April to all Owners and Claimants known or unknown.

Date of Assessment.	*Tax Payers Name*	*Description Prop'y*	*Lot*	*Block*	*Range*	*Number of Acres*	*Value of Land and Improvements*	*Value of Improvements on real estate assessed to persons other than the owners of said real estate*	*Value of Personal Property*	*Poll Tax*	*Total Value*	*Territorial Tax*	*County Tax*	*Total Tax*	*Remarks*
							$	$	$	$	$	$	$	$	

Roll to be completed, when.

SEC. 19. On or before the first Monday in August in each year the assessor shall complete his tax list or assessment roll and shall attach his certificate thereto, and deliver it and all the original lists of property given to him to the clerk of the Board of County Commissioners, and as soon as he receives the said assessment roll, the clerk of the Board of County Commissioners shall give notice of the fact, specifying therein the time of the meeting of the Board of Equalization, by publication in one newspaper, if there be one published in the county, and if none, then in such manner as the Board of Commissioners shall direct, and he shall keep the roll open in his office for public inspection.

Assessment of property not listed.

SEC. 20. It shall be lawful for the assessor, and it is hereby made his duty, at any time subsequent to the first Monday in August and prior to the first Monday in November in each year, to assess any personal property which shall not be on the regular list, or which shall have been brought into the county after the first Monday in August and prior to the first Monday of November in each year, and he shall enter such assessment in a separate portion of the tax list or assessment roll under the head of "subsequent assessments," and shall deliver a true copy of the original assessment to the County Auditor, to be by him compared with the entries on the assessment roll and the same shall then be filed with the clerk of the Board of Commissioners.

Compensation of assessor.

SEC. 21. The assessor and his deputy shall keep a correct account of the number of days they have been employed in the discharge of their official duties, and shall verify the same on oath before the clerk of the Board of Commissioners, or other persons qualified to administer oaths, and then shall present said account to the Board of Commissioners, who if satisfied of the correctness of the same shall allow it and order payment to be made at the rate of eight dollars per day; *provided* that the Board of Commissioners may fix the number of days for which pay shall be allowed any assessor or deputy for assessing the county. *And, provided further* that it shall be the duty of the assessor, between the first Monday of April and the first Monday of August of each year to assess all real estate and personal property within his county, between those dates and no real estate shall be assessed after the first Monday of August in each year.

Board of equalization.

SEC. 22. The Commissioners of the county shall constitute a Board of Equalization of which the clerk of the Board of Commissioners shall be clerk. The Board of Equalization shall meet on the third Monday in August in each year, and shall continue in session from time to time until the business of equalization presented to them is disposed of. The Board of Equalization shall have power to determine all complaints made in regard to the assessed value of any property, and may change and correct any valuation, either by adding thereto, or deducting therefrom; if they deem the same fixed in the assessment roll too small or too great, whenever said sum be fixed by the owner or assessor, except that in the case where the person complaining of the assessment, has refused to give the assessor his or her list under oath as required by this act; no reduction shall be made by the Board of Equalization in the assessment made by the assessor, and if the Board of Equalization shall find it necessary to add to the assessed valuation of any property on the assessment roll, they shall direct their clerk to give notice to the person interested by letter deposited in the postoffice, express or otherwise, naming the day when they shall act in that case, and allowing a reasonable time to appear, as soon as possible after the adjournment of the Board of Equalization in August, its clerk shall make out a list of all persons, the valuation of whose property has been added to with the amount so added on the assessment roll, who have not appeared before the Board, and a list of all property the valuation of which has been added to the assessment roll, with the amount so added, the owners of which have not appeared before the Board; and the Board of Commissioners shall cause the same to be published in one newspaper in the county, if there be any, and if not, then by posting a copy of the same in three public and conspicuous places in the county, one of which shall be at the court house door; and any person to the assessed value of whose property there was an amount so added, not appearing before the Board of Equalization in August may appear before the Board on the first Monday in October, and upon making affidavit of his or her property, he or she shall have a hearing before the Board of Equalization, and the determination shall then be final; and the clerk of the Board of Equalization shall note all changes made and report the same to the auditor, who shall make the changes required in the original assessment roll, and the auditor shall in his next regular statement to the controller of the Territory report such changes in such statement. During the session of the Board of Equalization the assessor shall be present, and also any deputy whose testimony may be required by the parties appealing to the Board, and they shall have the right to make any statement concerning any assessment, and producing evidence relating to the question before the Board. A quorum of the Board of Commissioners shall be sufficient to constitute the Board of Equalization, and a majority of the members present shall determine the action of the Board.

Duties of auditor.

SEC. 23. During the session, or as soon as possible after the adjournment of the Board of Equalization, its clerk shall enter upon the assessment roll all the changes and corrections made by the Board, and thereupon deliver the assessment roll so corrected to the county auditor, whose duty it shall be to add up the columns of valuation and enter the total valuation of each description of property on the roll, and also carry out in a separate money column the totals of taxes composed of Territorial, county and other taxes to each person; and on or before the fourth Monday in August he shall deliver the original assessment roll; and on or before the first Monday in November the subsequent assessment roll with his certificate attached, to the sheriff, who shall be *ex-officio* tax collector of all taxes due or unpaid thereon; *provided*, that for the services of the auditor rendered according to the provisions of this section, in carrying out the totals of taxes to each person, he shall receive a sum to be fixed by the Board of Commissioners of his county, not to exceed fifty cents a folio, counting each necessary figure as equivalent to one word; *provided*, that no compensation shall be received by the auditor for any other work required of him in this section; *provided also*, that nothing in this section shall be construed to give any additional compensation to those auditors who are paid by salaries.

Oath and bond of tax collector.

SEC. 24. The county tax collector before entering upon the duties of his office shall execute to Idaho Territory a bond in the penal sum of five thousand dollars, or in a greater sum if the Board of Commissioners of the county require it, with two or more sureties to be approved by the County Commissioners, conditioned for the faithful performance of all the duties of his office as required by law. Said bond shall be filed and recorded in the office of the county recorder, and he shall take the oath of office as prescribed by law, which shall be endorsed on said bond; *provided*, that no bond shall be required in a greater sum than twice the amount of taxes to be collected.

Deputies.

SEC. 25. The tax collector shall have the power of appointing one or more deputies to aid him in his official duties, for whose conduct he and his sureties shall be liable on his official bond; *provided however*, that said tax collector shall compensate said deputies for their services; and, *provided, further*, in the appointment of said deputies the collector and deputies herein provided for, shall be governed by the provisions of Sec. 7 of this act, in so far as the oath of office, the filing and revoking the same appointment are concerned.

Penalties.

SEC. 26. If any tax collector or his deputy shall wilfully neglect or refuse to perform any of the duties enjoined on him by the provisions of this act, he shall be guilty of a misdemeanor in office, and on conviction thereof shall be punished by imprisonment in the county jail, not more than one year, or by a fine of not less than two hundred nor more than one thousand dollars, or by both such fine and imprisonment, and shall be forthwith removed from office.

Duties of tax collector.

SEC. 27. The county assessor shall be *ex-officio* tax collector, and is hereby authorized to receive and collect all poll taxes, and hospital taxes, except traders, gambling, hurdy-gurdy and bawdy-house licenses, until such time as required to complete the assessment; and upon entry of moveable property to any person, firm, corporation, association or company, who does not own real estate, within the county of an actual value, equal to at least three times the amount of all the taxes due and owing from such person, firm, corporation, association or company, to demand the payment of taxes on the same; and if such person, firm, corporation, association or company, who does not own real estate of such value shall neglect or refuse to pay such taxes, the assessor or his deputy shall seize sufficient of the personal property of the party so neglecting or refusing to pay, to satisfy costs and taxes, and shall post a notice of such seizure, with a description of the property and the time and place where it will be sold, in three public places in the township, or election precinct where it is seized, and shall at the expiration of five days, proceed to sell at public auction at the time and place mentioned to the highest bidder for cash, a sufficient quantity of said property to pay the taxes and expenses incurred; and for this service he shall be allowed from the delinquent party a fee of three dollars and the same mileage a sheriff would be entitled to receive for traveling to the place to make a levy; and upon the payment of the purchase money, he shall deliver to the purchaser the property sold, together with a certificate of the sale, and the amount of the taxes or assessments and expenses thereon, for which the property was sold; whereupon the title to the property so sold shall vest absolutely in the purchaser, and the said assessor shall be entitled to receive all the taxes levied by virtue of this act during the time of the completion and return of such assessment; *provided*, that nothing in this section shall be construed to prevent the Board of Equalization from changing or correcting any valuation of property upon which such taxes have been paid as provided by law; *provided further*, that in all other cases of the collection of taxes the sheriff of the county shall be collector of all taxes except in the county of Boise, in which county the assessor shall be the tax collector of all poll taxes, *per capita*, and all taxes on real and personal property; *provided further*, that in said county of Boise the assessor shall pursue the same course as is provided in this act to be pursued by the sheriff as tax collector in other counties, except Ada county and Oneida, so far as relates to making out their delinquent tax list to the auditor shall be applicable to and govern the assessor of Boise county; except, that after the delinquent list is turned over to the district attorney, the assessor of Boise county shall cease to have any further control over it, and perform no further duties in connection therewith; *provided further*, that any tax collector who shall fail or neglect at the time of assessing any personal property to collect the taxes due thereon, which he is entitled and required to collect, shall be held liable on his official bonds for the amount of such taxes and all costs necessarily incurred in recovering the same; and the district attorney is hereby authorized and required to commence action against such tax collector and his sureties in any court of competent jurisdiction to recover the same; *provided*, that suit shall not be commenced until after the first Monday in each month.

List to be returned.

SEC. 28. The tax collector shall, on the first Monday of each month, return to the auditor a list of all collections made under the preceding section, giving the names of the persons from whom he received such taxes; also the amount received from each, and shall deliver to the auditor the sworn statements of each party assessed, which shall be filed in the office of the auditor for future reference.

Notice to be given.

SEC. 29. Upon receiving the assessment-roll from the auditor, the tax-collector shall proceed to collect the taxes, and shall forthwith give notice by publication in one newspaper, if there be any published in his county—and if none be published, then by posting notices in five public and conspicuous places in the county—that the Territorial and county taxes are due and payable, and that the laws in regard to their collection will be strictly enforced.

Receipt.

SEC. 30. Whenever any taxes are paid to the tax-collector, he shall mark the word "paid" and the date of payment in the assessment-roll opposite the name of the person or description of the property liable for such taxes, and shall give a receipt therefor specifying the amount of the assessment, the amount of the tax, and a description of the property assessed; but no tax-collector shall receive any taxes on real estate for any portion less than the least subdivision entered on the assessment-roll; *provided, always*, that an owner of undivided real estate may pay the proportion of taxes due on his interest therein.

Tax collector to make return to auditor.

SEC. 31. On the second Monday of October in each year the sheriff, as tax-collector, shall, at the close of his official business on that day, enter upon the assessment-roll a statement that he has made a levy upon all the property therein assessed, the taxes upon which had not been paid, and shall immediately ascertain the total amount of taxes then delinquent, and file in the office of the auditor a statement of said amount, verified by the oath of himself or deputy; which list shall be completed by the third Monday in October, and shall be known as the "delinquent list;" and to enable the tax-collector to make out the said list, no taxes shall be received by him on the duplicate assessment-roll after making the entry provided for in this section.

Tax-collector to pay over to treasurer.

SEC. 32. The tax-collector shall, on the first Monday in each month, pay to the county treasurer all moneys in his hands belonging to or collected for the use of the Territory or county; and shall, on the same day, present to the auditor the treasurer's receipt for said money, and shall at the same time deliver to the auditor, under oath, a true and correct account of all transactions and receipts since his last settlement as collector of Territorial and county taxes; and shall also state, under oath or affirmation, that all the money collected by him as tax-collector has been paid, which account and statement shall be filed in the office of the auditor. On the third Monday in October in each year, the sheriff, as tax-collector, shall attend at the office of the county auditor with his assessment-roll, and the auditor shall then and there administer to the sheriff, as tax-collector, an oath, which shall be written and subscribed on the assessment-roll, to the effect that each person and all property assessed in said roll on which taxes have been paid has the word "paid" marked opposite the name of such person or the description of such property; and the auditor shall then foot up the amount of taxes remaining unpaid, and credit the sheriff, as tax-collector, with the amount; and shall make a final settlement, as tax-collector, of all taxes charged against him on account of said assessment-roll. Within ten days after such final settlement, the auditor shall transmit, by mail or otherwise, to the controller of the Territory a statement, in such form as the Territorial controller may require, of all and each particular kind of property delinquent, and of the total amount of delinquent taxes. For the services required by this section the tax-collector shall receive no fee or compensation whatever.

Penalty.

SEC. 33. If any tax-collector shall refuse, for a period of five days, or wilfully neglect to make the payments and settlements with the treasurer and auditor of his county, as in this act specified, he and his sureties shall be held liable to pay the full amount of taxes charged upon the assessment-roll; and the district attorney, on his own volition, or being instructed to do so by the Territorial controller or Board of Commissioners of the county, shall cause suit to be brought against such tax-collector and his sureties for the full amount due on the auditor's books; and if any such suit is commenced, no credit or allowance whatever shall be made to such refusing or neglecting tax-collector for the delinquent taxes outstanding.

Delinquent taxes; how paid.

SEC. 34. At any time after the third Monday in October, and before the institution of suit, as hereinafter provided, any delinquent tax-payer may, upon a certificate from the auditor giving a description of the property and the taxes due thereon, pay to the county treasurer the taxes assessed against said delinquent, with five per cent. additional thereon, taking from the treasurer duplicate receipts for the amount paid—one of which receipts shall be filed with the county auditor, the other with the district attorney of the county. After having been served by any person with a duplicate receipt of the county treasurer for the total amount of taxes due from such persons, or upon a piece of property, with five per cent. thereon additional, the district attorney shall not commence the suit authorized by this act against such person or property; *provided*, that if any person shall fail to serve said receipt, such person shall pay all costs that may result from his or her negligence. The additional five per cent. provided for by this section shall be paid into the county treasury for the use of the county.

Return and publication of delinquents.

SEC. 35. The auditor shall, within two days after receiving the delinquent tax list, deliver the same to the district attorney or deputy, of his county, duly certified by him, and shall at the same time post, or cause to be posted, in three public and conspicuous places in each county—one of which shall be at the court-house door—three written or printed notices that said delinquent list has deen so deposited with the district attorney or his deputy; and that, if the delinquent taxes therein specified are not paid to the county treasurer within ten days from the posting of such notices, action will be commenced by said district attorney or deputy for the collection of such taxes and costs. He shall at the same time cause a copy of such notice to be printed in a county newspaper, if there be one in said county. Said auditor shall make or procure, and file with the district attorney immediately, an affidavit stating the contents of said notice and the manner and time of such publication or posting, as required in this section. The district attorney or his deputy, before receiving the delinquent list as provided in this section, shall enter into such additional bond (if any) as may be required by the Board of Commissioners.

Duties of district attorney.

SEC. 36. The district attorneys, or their deputies, of the several counties of this Territory are hereby authorized and directed, immediately after the expiration of the time specified in section thirty-five of this act, to commence action, in the name of the people of Idaho Territory, against the person so delinquent, and against the real estate and improvements so delinquent, or against the owner or owners or claimants thereof, whether known or unknown. Such action may be commenced in the county where such assessment is made before any court of competent jurisdiction in said county, and such jurisdiction shall be determined solely by the amount of delinquent tax sued for, without regard to the location of the land as to township, or the residence of the person as to town, township, county or territory.

Form of complaint

SEC. 37. For the purposes of the collecting or enforcing of any tax levied or assessed against any real estate or any improvement on real estate, in making up the complaint thereof it shall not be necessary to follow the description of the property as made in the assessment-roll; and the description in the complaint shall be deemed sufficient if it can be ascertained therefrom what land and improvements, or either, is intended. The complaints in all actions against the person and against the real estate and improvements assessed so delinquent may be as follows:

TERRITORY OF IDAHO, *County of* ———	The People of the Territory of Idaho. *vs*. A. B. and the Real Estate and Improvements in [describing them].

The People of the Territory of Idaho, by C. D., District Attorney of the County of ——— *complain of A. B., and also the following real estate and improvements* [description of property], *and for cause of action say:*

THAT between the first Monday in April and the ——— Monday of ——— A. D. 18—— in the county of ——— Territory of Idaho, O. P., then and there being county assessor in and for said county, did duly assess and set down upon an assessment-roll all the property, real and personal, in said county subject to taxation; and that said assessment-roll was afterwards submitted to the Board of Equalization of said county, and was by said board duly equalized, as provided by law;

THAT said A. B. was then and there owner of, and that there was duly assessed to him the above-described real estate, improvements upon real estate, and certain personal property;

AND THAT upon such property there has been duly levied, for the fiscal year A. D. 18—— a Territorial tax of

——— dollars, and a county tax of ——— dollars, amounting in the whole to ——— dollars, all of which is due and unpaid, of which amount ——— dollars was duly assessed and levied against the real estate, and ——— dollars against the improvements;

Wherefore, Said plaintiffs pray ——— judgment against said A. B. for the sum of ——— dollars [the whole of said tax], and separate judgment against the real estate and improvement, for the sum of ——— dollars [the tax thereon], and for such other judgment as to justice belongs; and for all costs subsequent to the assessment of said taxes and of this action.

C. D., *District Attorney, County of* ———

Provided, that if the property be assessed to an unknown owner, then any fictitious name may be inserted to represent such owner as defendant.

Summons.

SEC. 38. Upon filing the complaint in the district court, or before a justice of the peace, a summons shall be issued as is provided in civil cases, and shall be served by delivering a copy thereof to each defendant named; and as to said real estate or improvements, by delivering a copy thereof to the person or persons in possession of the same; and further as to all real estate, by posting a like copy in some public place thereon; *provided,* that if the personal defendant cannot be found in the county in which said action is brought, then service may be made upon such defendant by posting a copy of the summons for ten days at the court-house door of said county; *and provided further,* that when suit is commenced by the district attorney, under the provisions of this act, in justices' or district courts, all process and papers that require service must be delivered to the sheriff for service.

Answer of defendant.

SEC. 39. The defendant may answer, which answer shall be verified—

First—That the taxes have been paid before suit.

Second—That the taxes, with costs, have been paid since suit, or that such property is exempt from taxation under the provisions of section four of this act.

Third—Denying all claim, title or interest in the property assessed at the time of assessment.

Fourth—That the land is situated in and has been duly assessed in another county, and the taxes thereon paid.

Fifth—Fraud in the assessment, or fraud in failing or neglecting to comply with the provisions of this act, by which fraud the party or property assessed has suffered injury.

Provided, however, that the acts herein required between the assessment and the commencement of suit shall be deemed directory merely, and no other answer shall be permitted; *and provided further*, that if any such suit has proceeded to judgment, and such judgment remains wholly unsatisfied, the defendant shall be permitted to have such unsatisfied judgment re-opened for the purpose of setting up the defense allowed by the fourth subdivision of this section, and shall be entitled to avail himself of such defense as fully as he may by due course of pleading in suits thereafter to be commenced; *and provided further*, that in case a judgment shall be re-opened under the provisions of this section, and the defenses allowed by the fourth subdivision thereof shall be unsuccessfully interposed, such re-opening shall not have the effect to change the date of such judgment; but the same, and the liens thereby created, shall stand as if the said judgment had not been re-opened.

Evidence. SEC. 40. Said delinquent list—or copy thereof, certified by the county auditor—showing unpaid taxes against any person or property, shall be *prima facie* evidence in any court to prove the assessment, the property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of law in relation to the assessment and levy of such taxes have been complied with.

Costs. SEC. 41. In case judgment is rendered for the defendant, it shall be general, without costs, and may be entered in favor of some one or more of them, and against others, as in other civil cases. In case judgment is for the plaintiff, it may be entered against such defendant as is found liable to the tax, and for such amount or portion thereof as he or they shall be so adjudged liable. *Provided*, that no personal judgment shall be rendered unless the person against whom it is rendered shall have been personally served with the summons or shall have appeared in the action. Judgment may be entered against the real estate and improvements, severally, for the taxes severally assessed and levied thereon; and when it shall appear upon the assessment-roll, and not be disproved upon trial, that the real estate and improvements belong to the same person, or persons, then judgment may be rendered against said real estate and improvements, jointly, for the whole taxes thereon, or such part thereof as may be adjudged. Such judgments rendered in the district court shall be docketed and become liens upon all property against which judgment is rendered from the date of such assessment, and against all other real estate of the person assessed, subject to execution, for the amount of any judgment against him from the time of such docketing, as in other civil cases; and the district attorney may file transcripts of judgments rendered in justice's court under this act with the clerk of the district court, who shall thereupon docket such judgments, and they shall become liens from and after such docket entry, in like manner as judgments rendered in the district court under this act; *provided, however*, that when the lien attaches against the property owing the taxes, such lien shall not be released until the delinquent taxes are paid thereon, and the clerk of the district court may issue execution on such justice's judgments as on judgments rendered in the district court. Judgment may be rendered for want of an answer as in other civil cases. In case any person shall be sued for taxes on any land or improvements of which he was the owner, or in which he had a claim or interest at the institution of the suit, and shall be discharged from personal liability under an answer, in conformity with the third subdivision of section thirty-nine, and such lands or improvements shall be sold under a judgment obtained against it, and shall thereafter be redeemed by such discharged defendant, or if he shall pay the taxes and costs to prevent a sale, then such personally discharged defendant shall have and is hereby given the right of recovery over against the owner at the time of the assessment for the full sum of taxes and costs or redemption money paid; and in every case of such recovery the judgment shall, in addition to the taxes and costs, or in addition to the redemption money paid, include twenty-five per cent. of the amount of taxes and costs, or redemption money, as liquidated damages; and the receipt of the district attorney for taxes and costs, or of the sheriff for the redemption money, shall be sufficient evidence of the debt and of its amount.

Proceedings in civil cases.

SEC. 42. "An Act to regulate proceedings in civil cases in courts of justice in this Territory," so far as the same is not inconsistent with the provisions of this act, is hereby made applicable to proceedings under this act, and any deed derived from a sale of real property under this act, shall be conclusive evidence of title, except as against actual frauds or prepayment of the taxes by one not a party to or upon which such sale was made, and shall entitle the holder thereof to a writ from the district court to obtain possession of such property; *provided*, that the tax-collector, in selling said property, shall only sell the smallest quantity that any purchaser will take and pay the taxes and all costs, in all cases to be designated by the owner or possessor, if present: *and pro-*

vided further, that when property sold belongs to minors or persons under legal disability, they shall have until six months after such disability is removed to redeem such property, by paying the whole amount of the taxes, and all subsequent taxes and interest paid by and due to the purchaser at said sale; but this provision shall not apply when the executor or administrator of the estate, or the father, or in case of his death, the mother or guardian of such minor children has been personally notified of such taxes and sales; *and provided further*, that the real estate so sold for taxes may be redeemed from such sale, as in case of sale upon execution, as provided in civil cases, by paying to the tax collector the total amount of the taxes and all costs with fifty per cent. thereon: *and provided further*, that if the same is paid within three months from the date of the certificate of sale, it shall be for the total amount of the taxes and all costs with twenty-five per cent. thereon. All moneys collected under this act, except costs and charges, shall, without delay, be paid to the treasurer of the county, to be distributed to the proper funds; and each collection and the date thereof, shall be entered opposite the proper name, or property in the delinquent tax list, which shall be open to public inspection.

Compensation of district attorney.

Sec. 43. There shall be allowed to all officers, except district attorneys, the fees allowed in other civil cases. The district attorney shall be entitled to a compensation, equivalent to fifteen per cent. on the amount of taxes due to be added thereto if paid after suit brought and before judgment; and if not so paid then twenty-five per cent. to be taxed as other costs in the case, all officers shall perform such services as may be required of them under this act, without the payment of fees in advance, all costs shall be taxed and entered in the judgment against the person and the real estate and improvements when the judgment is the same against all, or if the judgment against the person and property are for different sums, then the costs may be apportioned by the court as the same may be deemed just: *provided*, that no fees or costs shall be paid to any officer or district attorney, unless the same be collected from the defendants; *provided*, that in counties where the officers receive a specific salary, the fees provided for them in this section shall be received by them for their own use.

Duties of district attorney.

Sec. 44. The district attorney shall on receipt of any money for taxes, enter the same on his delinquent list, opposite the name of the person delinquent, or opposite the description of the property, and shall on the first

Monday in each month after the time fixed in this act for the commencement of action against delinquent tax payers, pay to the county treasurer all moneys collected by him for taxes taking duplicate receipts for the amount so paid; one of which receipts he shall on the same day file with the auditor and shall at the same time file with the said auditor, a list of all judgments obtained by him up to that date for taxes under the provisions of this act, stating therein the names of the defendants if known, or if unknown a description of the property, the amount of each judgment and the name of the court of justice in which, or before whom said judgment was obtained, he shall on the Saturday next preceding the first Monday in April in each year, pay to the treasurer all moneys received by him for taxes and not previously paid over, taking duplicate receipts therefor, one of which shall in like manner be filed with the auditor and shall at the same time file with the auditor a list of all judgments obtained by him and not previously filed as herein provided, he shall also on the day last mentioned, make and file with the county auditor, an affidavit stating that he has paid to the county treasurer, all moneys collected by him for taxes prior to that date and filed the receipts therefor, and that the several lists filed by him as herein directed, contain all judgments obtained by him under the provisions of this act. On the first Monday in August, in each year, the district attorney shall attend at the office of the county auditor with the delinquent list and the auditor shall then carefully compare the same with the treasurer's receipts and statements filed by the district attorney, and if the same shall be found to be correct, the auditor shall give to the district attorney a receipt, specifying the same; the district attorney shall at the same time, deliver to the auditor a written statement, of all delinquent taxes upon said delinquent list or lists remaining uncollected, or for which suit has not been brought, with his reasons in detail for not being able to collect the same, or for not bringing suit; and the auditor shall immediately file the said delinquent list or lists, and statement with the clerk of the Board of Equalization, and the Board of Equalization shall revise the same by striking off such taxes as cannot be collected; the delinquent list or lists shall then be returned to the auditor, who shall note the changes made, and shall then return the same to the district attorney. The auditor shall in his next report to the controller, state the amount stricken off the delinquent list or lists by the Board of Equalization.

Penalty.

SEC. 45. If any district attorney shall fail or refuse to pay to the county treasurer as provided in this act, any money collected by him for taxes, he shall be guilty of a misdemeanor, and upon conviction thereof, shall be forthwith removed from office, and shall also be punished by a fine in any sum not exceeding five thousand dollars, or by imprisonment in the county jail, for a period not exceeding one year, or by both such fine and imprisonment.

Recorder to be auditor.

SEC. 46. The county recorder of each county in this Territory shall be ex-officio county auditor.

Bonds of auditor.

SEC. 47. The county auditor shall, before he enters upon the duties of the office, execute two bonds, one for the penal sum of five thousand dollars, or such greater sum as the Board of Commissioners may require, which shall be approved by the probate judge, and filed in the office of the controller of the Territory, and the other in the penal sum of two thousand five hundred dollars, or such greater sum as the Board of Commissioners may require, to be approved also by the probate judge, and filed in the office of the clerk of the district court; which bonds shall be conditioned for the faithful performance of all the duties of his office as required by law.

Penalty.

SEC. 48. If any county auditor shall by himself or deputy, neglect or refuse the duties enjoined on him by the provisions of this act, he shall be guilty of a felony; and on conviction thereof shall be punished by imprisonment in the Territorial prison for not more than one year, or by a fine of not less than two hundred nor more than one thousand dollars, or by both such fine and imprisonment, and shall be forthwith removed from office.

Pay of auditor.

SEC. 49. The auditor of each of the counties in this Territory who does not receive a salary; or a monthly compensation for his services as such auditor, shall be allowed to charge the fees allowed by law for any services he may render the county as auditor; *provided*, that no auditor shall be allowed to receive fees and salary, or monthly compensation at the same time for his services rendered the county as such auditor.

Duties of auditor.

SEC. 50. On delivering the assessment roll to the sheriff as tax collector, the auditor shall charge the sheriff as tax collector, with the full amount of the taxes levied, and shall forthwith transmit by mail to the Territorial controller, a statement of the amount so charged, and shall at the same time transmit to the Territorial controller a statement of the number of poll-tax receipts delivered to the tax collector and the number of said receipts returned to him on the settlement, which said returned receipts he shall forward to the controller by such conveyance as the Territorial controller, either by general or special order may direct, and shall at the same time make out and transmit by mail a statement of all Territorial and county licenses issued in the county since his last settlement in regard thereto, giving the number and aggregate amount of each kind of licenses issued.

SEC. 51. All statements which this act requires the auditor to make, shall be made under oath.

Duties of auditor.

SEC. 52. The auditor shall from time to time upon presentation to him of the receipts from the county treasurer for moneys collected and paid over by the tax collector, credit him with the amount thereof, and shall at the time required by law for the return of the delinquent list in each year, credit him with the amount of taxes then delinquent; and in case the tax list is transferred from one tax collector to another, he shall credit the one and charge the other with the amount then outstanding on the tax list, which amount shall be ascertained jointly by the outgoing and incoming tax collectors, at their own cost, without any expense to the Territory or county.

Forms and licenses.

SEC. 53. The auditor shall prepare printed forms (similar to those furnished by the controller) for all licenses, the entire proceeds of which are paid into the county treasury, and each license so prepared by him, shall be first numbered by the county treasurer, and by said treasurer charged to the auditor in a book kept for that purpose. The auditor shall then issue said licenses to the sheriff (who is hereby made collector of all licenses) from time to time as the same be required, and charge the sheriff with the same: and upon the first Monday in each month the sheriff with the treasurer, shall appear at the office of the auditor and settle for all licenses by him sold.

Reports.

SEC. 54. The county auditor shall make quarterly reports to the Territorial controller of the amount of money in the county treasury belonging to the Territory, stating specifically in said report the amount received from each source of revenue, prior to making which report, he shall examine the books of the county treasurer, and shall administer to the treasurer an oath, declaring that said books are correct, and that all the money received by him for, or on account of the Territory, has been duly entered therein. The Territorial controller shall forward to the auditor blank forms for the accounts to be rendered, and for the oath to be taken under this section, and the auditor shall, from time to time, furnish the tax collector with a sufficient number of licenses, taking his receipt therefor.

Auditor and treasurer to report to commissioners.

SEC. 55. The county auditor and treasurer of each county in the Territory shall, on the first Monday in January, April, July and October, make a joint statement to the Board of Commissioners showing the whole amount of collections, (stating particularly the source or portion of revenue) from all sources paid into the county treasury, the funds among which the same was distributed and the amount to each, the total amount of warrants drawn and unpaid, and the fund out of which they are to be paid; and generally make a specific showing of the financial condition of the county.

Taxes on mortgage debts.

SEC. 56. The county recorder of each county in this Territory, before he shall enter, or allow satisfaction to be entered on any mortgage or lien of record in his office. or record any release of any mortgage or lien in his office other than mortgages given to secure the purchase money of the property mortgaged, shall administer to the mortgage or person holding such mortgage or lien, or his or her agent or attorney the following oath or affirmation, which shall be reduced to writing by the recorder at the foot or margin of the record of such mortgage or lien, subscribed by the party making the same: "I do solemnly swear, or affirm that all taxes for Territorial or county purposses, assessed on the mortgage or debt secured by this mortgage (or lien) have been paid;" for which affidavit the recorder shall be allowed fifty cents; and if any person shall knowingly swear falsely in making such affidavit, he shall be deemed guilty of perjury, and punished accordingly; but if any county recorder shall enter, or permit to be entered, satisfaction, without making an entry of such affidavit, he shall be liable on his official bond, to pay the county the sum of five hundred dollars, which may be recovered by an action, which it shall be the duty of the prosecuting or district attorney to prosecute, and he shall have for each prosecution twenty-five per centum on the amount recovered.

Affidavit required.

SEC. 57. Whenever any action shall be brought for the foreclosure of any mortgage or lien mentioned in the next preceding section, a similar affidavit to that mentioned in said section, shall be attached to the complaint in such action; and in case the same shall not have been attached at the commencement of the action, the court in which the suit is pending, on motion of the defendant therein, or the district attorney, shall make an order staying all proceedings in such action until such affidavit shall have been filed, or proof made of payment of such taxes; and it shall be the duty of the court, before entering a decree or judgment in any such case, to require such affidavit or proof.

Poll-taxes, who liable for.

SEC. 58. Each male inhabitant of this Territory, over twenty-one, and under fifty years of age, and not by law exempt, shall pay a poll tax, for the use of the Territory and county, of four dollars: *provided*, the same be paid between the first Monday in March and the first Monday in August; but if the said poll tax is not paid prior to the first Monday in August it shall be five dollars; and seventy-five cents of the extra dollar shall be paid to the county treasurer for the school fund, and twenty-five cents be retained by the tax collector as fees, in addition to fifteen per cent. on the first four dollars, which it shall be lawful for him to retain as compensation for the collection of said poll tax.

Poll tax blanks.

SEC. 59. The Territorial controller shall, before the first Monday in April of each year, cause proper blank receipts for poll taxes to be printed, of a uniform appearance, changing the style thereof each year; and said controller, after signing and numbering them, shall cause a number thereof, equal to the probable number of inhabitants in each county liable to pay poll tax, to be immediately forwarded to the county treasurer of each county, who shall sign them, or so many of them as may be required, and make an entry thereof in a book to be kept for that purpose, and thereupon deliver them to the county auditor, who shall likewise sign them, and make an entry of the number he receives, in a book to be kept by him for that purpose.

Auditor to issue.

SEC. 60. The county auditor shall from time to time issue to the tax collector so many of the receipts for poll-tax as he may need, taking his receipt therefor.

Penalty.

SEC. 61. No receipts for poll-tax, other than those mentioned in the fifty-ninth section of this act, shall be used, or given for the payment of any such tax; and any tax collector who shall receive any poll-tax without delivering the proper receipt required by law, shall be guilty of a misdemeanor for each poll-tax so received, and on conviction thereof shall be punished by imprisonment in the county jail, not less than three months, nor more than one year, or by a fine of not less than one hundred nor more than five hundred dollars for each offense, or by both such fine and imprisonment.

When collector charged with receipts.

SEC. 62. Upon receiving such receipts from the county auditor, the tax collector shall give a receipt to said auditor for the same, and the said auditor shall immediately charge the same to the tax collector so receiving them. All receipts delivered to the tax collector before the first Monday in April shall be filled out with the sum of four dollars, and four dollars shall be charged to him for each one so delivered, and all such receipts delivered to the tax collector after the first Monday in August in each year shall be filled out with the sum of five dollars, and five dollars shall be charged to him for each one so delivered.

Additional bonds. SEC. 63. The Board of Commissioners of each county shall exact (if they deem it advisable) an additional bond from the tax collector, with additional sureties in such penal sums as the said Board shall believe to be necessary to insure the prompt and faithful payment to the county treasurer of all moneys received by such tax collector for poll-tax.

Proof of payment of poll-tax. SEC. 64. No person shall be deemed or held to have paid his poll-tax, unless he is able to exhibit a receipt therefor, issued from the office of the Territorial controller, or otherwise prove the payment of the same.

Penalty. SEC. 65. Any person or persons who shall pass, sell or transfer, or who shall forge, or fraudulently issue any receipt, or receipts for poll-tax contrary to the spirit or intention of this act, shall be guilty of felony, and on conviction thereof shall be punished by imprisonment in the Territorial prison for not less than one year nor more than two years.

Collector may seize property. SEC. 66. To enforce the collection of poll-taxes, as provided in this act, the tax collector may seize so much of any and every species of personal property whatever, claimed by any person liable to and refusing or neglecting to pay his poll-tax or property in the possession of or due from any other person and belonging to such person so refusing to pay such poll-tax, as will be sufficient to pay such poll-tax and costs of seizure, which costs shall not exceed three dollars; and shall and may sell the same at any time or place, upon giving a verbal notice of one hour previous to such sale, and any person indebted to another liable to pay poll-tax, but who has neglected or refused to pay the same, shall be liable to pay said tax for such other person after service upon him by the tax collector of a notice in writing, stating the name or names of the person or persons so liable, and owing poll-tax, and such debtor may deduct the amount thereof, with the costs of serving said notice, which shall be one dollar (and for which he shall be equally responsible) from such indebtedness: *provided*, that whenever any person has persons in his employ liable to pay poll-tax, to whom any money is due, it shall be lawful for the collector to demand of the employer the names of persons so employed, and leave with the employer poll-tax receipts for the parties so employed, and the employer is hereby required to pay the same, and such tax receipt shall be a set-off against the claims of such employees, but in this case no charge shall be made by the collector for the garnishee; and in case of neglect or refusal by such person or employer to pay the same, enforcement of payment thereof shall be made as in this section provided against such person or employee.

Sale.

SEC. 67. The tax collector after having deducted the poll-tax for which property was sold, and the necessary fees and costs of sale, shall return the surplus of the proceeds to the owner of the property a delivery of the possession of the property by the tax collector to any purchaser, at any such sale shall be a sufficient title in the purchaser, without execution of a certificate of purchase thereof, by the tax collector.

Penalty for false name.

SEC. 68. If any person shall give to the tax collector or his deputy a false name, or shall refuse to give his name, he shall be guilty of a misdemeanor, and shall be arrested upon complaint of the tax collector or his deputy, and upon conviction before a justice of the peace, he shall be punished by a fine of not less than ten dollars, nor more than one hundred dollars, or by imprisonment for a term of not less than two days nor more than three months, or by both such fine and imprisonment.

Poll-taxes to be paid to treasurer.

SEC. 69. All money collected as poll-tax under the provisions of this act, after the expense of collecting are paid shall be paid into the county treasury; one-half thereof to be appropriated to Territorial purposes, and the remaining one-half to county purposes.

Monthly reports.

SEC. 70. On the first Monday of each month the tax collector shall make oath before the county auditor of the total number of poll-taxes collected by him during the last preceding month, and shall at the same time file the county treasurer's receipt for the total amount of poll-taxes collected, less fifteen per cent. allowed by this act for fees; and on the first Monday in August he shall return all the four dollar poll-tax receipts by him received and not used, and shall pay to the treasurer the total amount collected and not paid in theretofore, subject to the deduction aforesaid; and he shall at the same time receive from the Territorial controller, through the treasurer and county auditor a sufficient number of five dollar receipts to enable him to collect taxes from all the polls in his county who have not then paid, and on the

Saturday next preceding the third Monday in February in each year the tax collector and the treasurer shall attend at the office of the county auditor, and the county auditor shall then and there finally settle with the tax collector for all poll-tax receipts signed by the treasurer and delivered to him; and the tax collector shall then pay over the amount of all poll-tax receipts received by him, not then and theretofore returned; and all the poll-tax receipts returned by the tax collector shall be forthwith transmitted by the county treasurer with his usual statement to the Territorial controller; and no poll-tax receipts shall be valid for any year unless issued after the first Monday of April in each year.

Auditor to send statement to controller.

SEC. 71. At the settlement with the tax collector, required on the third Monday in February it shall be the duty of the county auditor, and he is hereby required to forthwith transmit to the Territorial controller a certified statement of the amount of poll-taxes paid over to the county treasurer of his county up to that time, and shall deliver a duplicate of such statement to the county treasurer; and on the final settlement on the Saturday next preceding the first Monday of April in each year, the county auditor shall immediately upon the conclusion thereof, transmit a certified statement to the Territorial controller, stating therein the number of all receipts for poll-taxes delivered by the county treasurer to him; the number of such receipts issued by him to the tax collector; the number of such receipts returned by the tax collector, and the number of such receipts then transmitted to the Territorial controller.

Licenses.

SEC. 72. There shall be levied and collected by the sheriff as tax collector a license tax as follows:

First—From each proprietor or keeper of a billiard table, not kept for the exclusive use of the owner or his family, for each table fifteen dollars per quarter; for a nine or ten-pin or bowling alley, fifteen dollars per quarter—license to be granted for a term not less than three months.

Second—From the manager or lesee of every theatre, three dollars per day if granted for a less term than one month, if granted for one month, fifty dollars shall be paid; and for each exhibition of serenaders, or opera singers, one-half of the rates paid for license as is required for theatrical performers.

Third—For each day a caravan, menagerie or circus performance is exhibited, fifteen dollars for each day of exhibition; of any figures, wire or rope dancing, or sleight-of-hand performances, for reward, the sum of five dollars.

Fourth—From each pawn-broker, fifty dollars per quarter year; from each and every hurdy-gurdy or other public dance house, ten dollars per day, and license shall not be granted for a less time than ten days.

Merchants and peddlers.

SEC. 73. Every traveling merchant, hawker, or peddler, who shall carry a pack and vend wares, goods or merchandise of any kind, and every auctioneer shall pay for each license ten dollars per month; and every such traveling merchant, hawker or peddler, who shall use a wagon, or one or more animals for the purpose of vending any wares or merchandise of any kind, or wines, fermented liquors or spirituous liquors, shall pay for each license twenty dollars per month: *provided*, that nothing in this section shall be so construed as to apply to the agricultural productions, or to any vegetables or green fruit grown in any place in this Territory. The county auditor shall issue to the tax collector the licenses contemplated in this section, which licenses so issued shall autorize the holders of the same to vend goods, wares and merchandise as set forth in such license in the county where such licenses are obtained; and it is hereby made the duty of every justice of the peace, constable, sheriff, tax collector and peace officer to demand the license of any such peddler or hawker, and if such person cannot produce or prove the taking out of a license as directed by law, such person shall be guilty of a misdemeanor, and on conviction shall be fined in any sum not less than fifty nor more than one hundred dollars. The money so collected shall be paid into the county treasury for county purposes.

Time licenses run.

SEC. 74. The licenses provided to be granted by the provisions of the preceding section shall be granted for one, three, six or twelve months, at the option of the party applying for such licenses.

Liquor licenses.

SEC. 75. All persons who may dispose of any spirituous, malt or fermented liquors or wine in less quantities than one quart, shall, before the transaction of any such business, obtain a license from the tax collector, for which they shall pay the sum of fifty dollars per quarter; *provided*, *however*, that all persons engaged in retailing liquors in connection with entertainments for travelers, at any point, distant one mile or more outside the limits of any city or town within this Territory, shall pay a quarterly license of fifteen dollars, and one dollar to the tax collector for his fees, one-half of said fees shall be paid to the county auditor, as made and provided for in this act.

Distilleries.

SEC. 76. Every person who has a fixed place of business, who may deal in goods, wares or merchandise, wines or distilled liquors, except the agricultural productions of this Territory, (when sold by the producers thereof) and except such as are sold by auctioneers under license, according to law, shall pay quarterly an amount of money for license as required by the class in which such person is placed by the tax collector of the county, under the provisions of the succeeding section: *provided, always*, that nothing herein shall be construed to extend to physicians, apothecaries or chemists as to any wines or spirituous liquors which they may use in the preparation or compounding of medicines.

Classification of persons of whom licenses are required.

SEC. 77. Every person who shall sell or vend any goods, wares or merchandise, or wines or distilled liquors, drugs or medicines, jewelry or wares of precious metals, and persons who keep horses and carriages for rent or hire, except mules, horses or animals used in transportation of goods, shall obtain from the tax collector of the county in which such business may be transacted, for each of the branches of business in this and the preceding section enumerated, a license for the transaction of that business at the following rates to wit: All persons dealing as aforesaid shall be classed according to the amount of the average monthly sale or sales effected in the following manner, that is to say: Those who are estimated to make average monthly sales to the amount of one hundred thousand dollars or more, shall constitute the first class; of seventy-five thousand dollars, and less than one hundred thousand dollars, shall constitute the second class; of fifty thousand dollars and less than seventy-five thousand dollars, shall constitute the third class; of forty thousand dollars, and less than fifty thousand dollars shall constitute the fourth class; of thirty thousand dollars and less than forty thousand dollars, shall constitute the fifth class; of twenty thousand dollars, and less than thirty thousand dollars, shall constitute the sixth class; of ten thousand dollars and less than twenty thousand dollars, shall constitute the seventh class; of five thousand dollars, and less than ten thousand dollars, shall constitute the eighth class; of two thousand dollars, and less than five thousand dollars, shall constitute the ninth class; of all amounts under two thousand dollars, the tenth class. The license for the first class shall be given upon the payment of one hundred dollars per month; for the second class, seventy-five dollars per month; for the third class, fifty dollars per month; for the fourth class, forty dollars per month; for the fifth class, thirty dollars per month; for the sixth class, twenty dollars per month; for the seventh class, fifteen dollars per month; for the eighth class, ten dollars per month; for the ninth class, seven dollars and fifty cents per month; for the tenth class, five dollars per month: *provided*, that the sale of liquors and wines by persons licensed under this section, shall not be in less quantities than one quart, and no license shall be issued for less time than three months.

Bankers and brokers.

SEC. 78. Licenses shall be obtained by the person or persons, association or incorporation, doing business in this Territory, engaged in any of the following occupations, to wit: In buying or selling foreign or inland exchange or in loaning moneys at interest, or in buying or selling notes, bonds or other evidences of indebtedness of private persons, or Territorial, county or city stocks, or indebtedness, or stock of incorporated companies, or person or persons, or in buying or selling gold dust or silver bullion, or gold or silver coin, keepers of savings banks or engaged as common carriers in transmitting or carrying gold dust, gold or silver coin or bullion from any place in this Territory, to any place without this Territory, or from one place to another place within this Territory for profit, or engaged in receiving general or special deposits of gold dust, gold and silver coin or bullion, for profit: *provided*, that checks used in the transaction of business between parties in this Territory, shall not be excluded nor liable to the provisions of this act.

Such persons classified.

SEC. 79. Any person or persons, associations or corporations engaged in any business or occupation enumerated in the preceding section, shall be divided into five classes, as follows: Those doing business in the aggregate to the amount of two hundred and fifty thousand dollars per quarter, and over, shall constitute the first class; those doing business to the amount of two hundred thousand dollars, and less than two hundred and fifty thousand dollars per quarter, shall constitute the second class; those doing business to the amount of one hundred thousand dollars, and less than two hundred thousand dollars per quarter, shall constitute the third class; those doing business to the amount of fifty thousand dollars, and less than one hundred thousand dollars per quarter, shall constitute the fourth class; and those doing business in any amount less than fifty thousand dollars per quarter, shall constitute the fifth class. Licenses shall be obtained from the tax collector, and shall be given for the first class, upon the payment of one hundred dollars per quarter; for the second class, eighty dollars per quarter; for the third class, fifty dollars per quarter; for the fourth class, the sum of forty dollars per quarter; for the fifth class, thirty dollars per quarter. Said amounts to be paid to the tax collector of each county in which the party applying therefor desires to or does transact any or all of the occupations specified in the preceding section of this act.

Bankers classified.

SEC. 80. Bankers or any persons, associations or corporations, as are or may be engaged in buying or selling foreign or domestic bills of exchange, or drafts, shall be divided into five classes. Those doing business to the amount of five hundred thousand dollars or over per month, shall constitute the first class; those doing business to the amount of three hundred thousand dollars per month, and less than five hundred thousand dollars per month, shall constitute the second class; those doing business to the amount of two hundred thousand dollars and less than three hundred thousand dollars per month, shall constitute the third class; those doing business to the amount of one hundred thousand, and less than two hundred thousand dollars per month, shall constitute the fourth class; those doing business in any amount less than one hundred thousand dollars per month, shall constitute the fifth class. The license for the first class shall be given upon the payment to the tax collector of the county in which such business is carried on, the sum of one hundred dollars per month; for the second class, the sum of seventy dollars per month; for the third class, the sum of fifty dollars per month; for the fourth class, the sum of forty dollars per month; for the fifth class, the sum of thirty dollars per month.

Blank licenses.

SEC. 81. The Territorial controller, before the first Monday in February in each year, shall cause to be printed proper blank licenses, each containing a blank receipt, to be signed by the county tax collector, on delivery to the purchaser thereof, said licenses to be of a uniform appearance, and the style thereof changed each year; and the Territorial controller, after signing, numbering and classifying the same, shall transmit as many as may be required, to the auditor of the several counties. They shall transmit to the county treasurers a sufficient number of blanks for the use of the county, which shall be charged to the said treasurer on the auditor's books; the treasurer shall countersign the same and deliver them to the county auditor, taking his receipt therefor.

SEC. 82. The county auditor shall, from time to time, deliver to the tax collector as many of such licenses as may be required, and shall sign the same, and charge them to the tax collector, specifying the class of license in the charge. On the first Monday in each month, the tax collector shall return to the county auditor, all licenses not issued, and the county auditor shall credit him with the amount so returned, so that the account shall show the amount of money received for licenses issued, and open a new account with the tax collector for the next month.

Auditor to furnish collector blanks.

SEC. 83. If either the treasurer, county auditor, tax collector or any other person, shall issue, have in his possession, with intent to circulate, or put in circulation, any other license than those properly issued to the tax collector, under the provisions of this act, the person so offending shall be guilty of felony, and, on conviction, be sentenced to imprisonment in the Territorial prison for a term of not less than one year nor more than four years; and any tax collector who shall receive the money for a license without delivering to the person paying for the same, the license paid for, or who shall insert the name of more than one person or firm therein, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, and by imprisonment in the county jail not less than three months nor more than one year.

Penalty.

SEC. 84. Each tax collector shall make diligent inquiry and examination as to all persons in his county liable to pay license, as provided in this and foregoing sections, and the collector is hereby empowered, and it shall be his duty to require each person to state under oath or affirmation, the probable amount of business which he or the firm of which he is a member, or for which he is agent or attorney or the association or corporation of which he is president, secretary or managing agent, will do in the next succeeding three months; and also to make a statement under oath, if required, in order to carry out the provisions of this act, and thereupon such person, agent, secretary, or other officer, shall procure a license from said tax collector for three months, of the class of which said party is liable to pay; and in all cases where an under estimate has been made by the party applying, the party making such under estimate shall be required to pay a double license for the next quarter. Licenses shall be procured immediately before the commencement of any business or occupation liable to license

Duties of collector as to licenses.

tax, under this and foregoing sections. Such license shall authorize the party obtaining the same, in his town, city or particular locality in the county, to transact business as provided in such license: *provided*, that nothing in this act, nor in any license issued under it, shall be construed to authorize any person to carry on any business within the limits of an incorporated city or town, authorized by its charter to impose or to levy city or town license taxes, unless such person shall, in addition to the license if any be required by this act, also procure the license or licenses required by the ordinances or orders of such city or town; *and provided further*, that any person or persons who shall commence or continue to carry on or transact any business, trade, profession or calling for the transaction or carrying on of which a license is required by this act, without procuring the proper license as herein required, such person shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than ten nor more than one hundred dollars, *and provided, further*, that if any person or persons required by the provisions of this act to take out a license, shall fail, neglect or refuse to take out such license, in the manner provided by this act, or shall carry on or attempt to transact business without such license, it shall be the duty of the tax collector to report the names of such persons to the district attorney, and the district attorney is hereby authorized and required to bring suit in the name of the people of Idaho Territory as plaintiffs against him or them for the recovery of the license money, and in such case either the collector or district attorney may make the necessary affidavit in any court of competent jurisdiction, and a writ of attachment may issue without any bonds being given on behalf of the plaintiffs; and in case of recovery by the plaintiffs, twenty dollars liquidated damages shall be included in the judgment and costs, and be collected from the defendant, and five dollars thereof shall be paid to the collector and fifteen dollars to the district attorney. Upon the trial of any criminal action, provided for by this section, the defendant shall be deemed not to have procured the proper license unless he either produces it or prove that he did procure it; but he may plead in bar of the criminal action, a recovery against him and the payment by him in a civil action of the proper license money, damages and costs.

Licenses to be charged to collector.

SEC. 85. The auditor shall, from time to time, deliver to the tax collector as many of such licenses as may be required, and shall sign the same and charge them to the tax collector, specifying the class of license in the charge.

Sec. 86. All money collected as license, under the provisions of this act, after the expenses of collection are paid, shall be paid into the county treasury; two-tenths for Territorial purposes and eight-tenths for county purposes.

License money to be paid to treasurer

Sec. 87. On the first business day of January, April, July and October, respectively, of each year, or within ten days thereafter, each county auditor shall report to the Territorial controller, the number of licenses issued by the tax collector or officer charged with the duty of issuing the same, the amount of money paid for the same, and the number and description of licenses on hand, and the Territorial controller shall hold each county treasurer or other county officer responsible for all county licenses issued to him under this act, not accounted for or returned at the settlement required by this act to be made in April of each year.

Auditor to report to controller.

Sec. 88. A license shall be granted to any person or persons on the payment of fifty dollars per quarter, for each game so kept, of any of the following games to wit: faro, monte, E. O. or roulette, shuffle board, or any other banking games at cards, dice or other device: *provided*, that no person shall have a license for three card or French monte, or the game commonly called the thimble game, and those games are hereby made unlawful.

Gambling licenses.

Sec. 89. Any person or persons who shall keep any game or games specified in section 88, of this act, without first having obtained a license therefor, shall on conviction be fined in any sum not less than one hundred dollars, nor more than five hundred dollars, and may be both fined and imprisoned in the county jail for a period of ninety days. District courts, probate courts, and justices' courts, when within their jurisdiction, shall have power to try and determine any violation of any of the provisions of this act.

Penalties.

Sec. 90. All moneys collected for licenses and all fines collected under the provisions of the two preceding sections of this act shall be paid into the county treasury for the benefit of the county school fund.

Go to school fund

Sec. 91. All licenses shall be obtained from the sheriff of the county in which such games are kept.

Sec. 92. Each county treasurer shall keep all the money received by virtue of his office in his own possession, or on special deposit, and no person except the treasurer or one of his deputies shall receive or pay out any money in his office, and when any money shall be paid to the county treasurer, he shall give to the person

Duties of treasurer.

paynig the same a receipt therefor, which receipt such person shall forthwith deposit with the county auditor who shall charge the treasurer therewith, and give the person paying the same an acquittance.

Treasurer's duties.

SEC. 93. The treasurers of the respective counties shall at all times hold themselves in readiness to settle and pay all moneys in their hands whenever required to do so by an order signed by the controller and treasurer of the Territory, and the treasurer and controller are hereby authorized to draw such orders whenever they deem it proper. The treasurer shall on the first Monday of April, July, October and January in each year, make out and transmit by mail, express or other safe conveyance, a statement to the Territorial controller and treasurer, together with all moneys which shall have come into their hands as county treasurer for the use and benefit of the Territory; also a report from the county auditor, stating specifically the amount due the Territory from each particular source of revenue, which shall be filed in the office of the Territorial controller, and a duplicate of the same shall be filed in the office of the county auditor. The Territorial treasurer is hereby authorized to pay out of the Territorial treasury, all necessary expenses incurred in the transmission of Territorial moneys from the respective county treasurers to the Territorial treasury. Any county treasurer who shall fail, neglect or refuse on the days herein specified, or within fifteen days thereafter, to transmit the statement and moneys above mentioned, shall be liable on his official bond: *provided*, that any county treasurer may go in person to the Territorial controller and treasurer and make his quarterly settlements; but shall not be allowed for expenses more than would have been necessary to transmit the same as provided in this section.

Settlement of treasurer

SEC. 94. And each county treasurer shall at the time of making his settlement with the controller, produce to him statements of transactions had in Territorial and county licenses and poll-tax receipts since the last settlements; which statement shall be made by the county auditor according to the forms which shall be furnished by the Territorial controller for that purpose, and each county treasurer shall at the same time produce to the controller the certified statement of the county auditor of the amount allowed and paid to the assessor, tax collector and auditor as prescribed by this act; and no county treasurer shall be allowed to make any settlement with the controller or in any manner to release himself and bondsmen from liability for the full amount of money by him received, unless he produces to the controller the statement required by this section.

Allowances to be certified to.

SEC. 95. Whenever any allowance is made to any assessor, tax collector or auditor, as in this act provided, the clerk of the Board of Commissioners shall certify to the amount so allowed to the auditor, who shall draw his warrant on the county treasurer for that part of the same which the county is required to pay, which shall be in proportion to the amount of the taxes levied for Territorial and county purposes respectively; and the auditor shall make a certified copy of the account, and endorse thereon the amount due from the Territory, and endorse on the account remaining in his office the same, and shall furnish such copy, with the endorsement thereon to the county treasurer, who shall pay out of the money belonging to the Territory the amount endorsed on such account, to the assessor, tax collector or auditor, and take his receipt thereon; and the treasurer on making his quarterly settlement shall present with the auditor's statement, such copy of the account allowed by the Board to the assessor, tax collector or auditor, endorsed and receipted as herein provided, and the Territorial controller shall allow him for the amount so paid.

Compensation of treasurer.

SEC. 96. The county treasurer shall be allowed on all money received and disbursed by him, three per cent. on the first thirty thousand dollars, two per cent. on all over thirty thousand dollars and under one hundred thousand dollars, and one per cent. on all over one hundred thousand dollars: *provided*, nothing in this act shall be construed so as to allow any officer a percentage on both receiving and disbursing; *provided further*, that in all counties where the compensation of the county treasurer is fixed by special law, said counties shall be excepted and exempted from the provisions of this section, as far as it relates to the compensation of the county treasurers, and such county treasurers shall receive such compensation as provided by such special laws and shall receive no other compensation.

Penalties.

SEC. 97. Whenever any assessor, collector, auditor, treasurer, or other officer, upon whom any duties devolve under this act, or under any other revenue act of this Territory, shall wilfully neglect or refuse to perform any such duties, or shall perform them in a careless or incompetent manner, he shall be deemed guilty of a misdemeanor, and shall be removed from office in the manner prescribed by law, and when an issue of fact shall have been joined under any presentment made, or proceeding commenced, to remove such officer from his office, the Board of Commissioners, (and in case such officer be a Commissioner) then the probate judge. shall have power to suspend such assessor, collector, auditor, treasurer or other officer from his powers and duties under this act, and under any other revenue act, and to appoint a competent person in his place, until the proper tribunal shall have either removed or acquitted such suspended officer; and any act on or about the revenue or assessment, or the collection of taxes, sale of property for the non-payment of taxes, performed by any such tempororary officer, shall be as valid and of the same force and effect as if performed by the suspended officer: *provided however*, that such appointee shall first qualify and give such bond, with sureties, for the faithful performance of the duties of his office, as may be required of persons elected thereto.

Officers to settle with auditor.

SEC. 98. Each assessor, tax collector and county treasurer, shall on the Saturday next preceding the first Monday in April in each year, attend at the office of the county auditor, for the purpose of making a settlement with him on account of all transactions connected with the revenue of the year ending on that day. The tax collector shall return to the auditor all unsold miscellaneous licenses, and each and every officer, whether assessor, tax collector, treasurer or auditor, on going out of office, shall deliver to his successor in office all the public money, books, accounts, papers and documents appertaining to his office and in his possession, taking a receipt therefor.

Embezzlement.

SEC. 99. If any tax collector or county treasurer shall, either directly or indirectly, use, loan, or in any manner place out of his possession, otherwise than on special deposit, any funds belonging to, or collected by, or paid to him for the use and benefit of either the Territory or of any county, he shall be guilty of a felony, and on conviction thereof be forthwith removed from office, and shall also be punished by a fine in any sum not exceeding five thousand dollars, or imprisonment in the Territorial prison for any time not exceeding one year, or by both such fine and imprisonment. The treasurer, tax collector, assessor, auditor, clerk of the Board of Equalization, and each member of such Board, shall each separately perform the duties required of him in his office, and shall not perform the duties of any two officers under this act, except as provided by law; and any officer who shall at the same time perform the duties of any two officers in any manner connected with the public revenue, except in the manner as expressly provided by law, or any collecting or disbursing officer who shall refuse or neglect the performance of the duties required by this act, shall be guilty of a felony, and on conviction thereof, shall be punished by imprisonment in the Territorial prison not more than one year, and by a fine of not less than two hundred nor more than one thousand dollars, or by both such fine and imprisonment, and shall forthwith be removed from office.

Books to be open for inspection.

SEC. 100. The books, papers and accounts of each officer, in regard to the assessment or collection of taxes, or to the receiving, auditing or disbursing moneys collected for the use or benefit of the Territory, or of any county, shall at all times during office hours, when not necessarily in use by the officers, be open for any person whomsoever to inspect or copy without any fee or charge.

Property in transitu.

SEC. 101. All goods, wares, merchandise, quartz mills, machinery, vehicles, wagons, pack trains, and animals of whatsoever nature, whether draft or for consumption, and all other personal or movable property of whatsoever kind or description in transitu in passing through the counties of this Territory, and destined for or belonging to any particular place or county in this Territory, shall not be assessed while in transitu through any other county, but shall be assessed by the assessor of the county to which said property may be destined, and, on its arrival in the county of its destination, and not until such property shall have passed within the bounds of the county which may be the place of such property's destination, and where such property rightfully belongs: *provided*, that if property remain in any county thirty days it shall be taxed in such county.

An act to amend an act entitled "An Act, to provide a uniform system of Territorial and county revenue and for the assessing and collecting the same," approved January 6th, A. D. 1873, is hereby repealed.

Illegal assessments.

SEC. 102. And, further, if any such personal property whatsoever, be assessed in transitu, or passing through any county in this Territory, when destined for or belonging to any other county, such assessment shall be illegal and invalid, and if any such illegal and invalid assessment be made, and any taxes whatsoever shall be collected the person or parties so illegally assessed and paying taxes again thereon, in the county to which his property assessed may be destined or rightfully belong, shall have the right to recover from the assessor making said illegal assessment, by suit, in any competent court the amount of taxes paid, together with treble damages he may have sustained by reason of detention caused by said illegal assessment: and, further, that any illegal and invalid assessment so made while in transitu, or traveling through any county in this Territory, while destined for or belonging to any other county, shall not prevent the assessor of the county where such property is destined for and arrives, from assessing the same, and that despite any such illegal assessment, it shall be the duty of the assessor of any county where such property belongs, or is destined, upon its arrival in said county, to assess the same, and that the taxes due upon any such assessment so made shall be collected and enforced as otherwise provided in this act for the collection of taxes due on personal property.

Duties and powers of assessor, as to property in transitu.

SEC. 103. For the purpose of enabling any assessor of any county to determine when any such personal property is in transitu through the county of which he is assessor, he shall and is hereby authorized to administer an oath or affirmation to the person or persons, party or parties, the owners of, or who are in charge or possession of such personal property, or to any hired hand connected with said personal property, or to any person whomsoever who may be informed of the destination of such personal property, or where any such property belongs; and any statement so made under oath or affirmation, by such persons, shall be sufficient proof of evidence to what county such personal property belongs. Any false statements made to any assessor shall subject the persons or parties making the same to the pains and penalties of perjury; and the assessor shall note, in a book kept for that purpose, a description of the property sought to be assessed, together with the names of the persons sworn, and the destination stated by them, and the date of examination. If any such persons, being the owners of or in charge of such personal property, shall neglect or refuse to give under oath or affirmation the statements required by this section, the assessor shall thereupon proceed to assess the same and said assessment so made upon any such refusal or neglect to make such statement required, shall be legal and valid, although said personal property may be destined for and belonging in any other county, and such assessment so made shall not prevent or be a bar to a further assessment on the arrival of any such personal property in the county to which it is destined or may rightfully belong.

Pay of collectors.

SEC. 104. The collectors of taxes in the counties of this Territory shall be allowed for collecting all taxes (except poll-taxes) the following rates on all moneys collected and paid over by them in each fiscal year, commencing on the first Monday of April, ten per centum on the first ten thousand dollars; four per centum on all over ten thousand and under twenty thousand dollars; three per centum on all over twenty thousand and under fifty thousand dollars; two per centum on all over fifty thousand and under one hundred thousand dollars, and one per centum on all over one hundred thousand and under two hundred thousand dollars; *provided;* that the assessor, as ex-officio tax collector shall be allowed on all collections on subsequent assessments assessed after the first Monday in August, twenty-five per cent. on the first ten thousand, and ten per cent. on all over ten thousand dollars; but, shall receive no per diem pay for making any subsequent assessment or for collecting poll or other per capita taxes.

Taxes collected in precincts.

SEC. 105. It shall be the duty of the assessor to give notice by posting notices in at least three public places in each precinct in the county for the space of five days, that he will attend at the time specified in said notice for the purpose of assessing and collecting the taxes in said precinct and vicinity; *provided,* this section shall be applicable only to the original assessment for which service the assessor shall receive no compensation: *provided,* that all counties where the compensation of the treasurer, auditor, sheriff, district attorney, assessor and tax collector is fixed by special laws, shall be excepted and exempted from the provisions of this act, as far as it relates to the compensation of the treasurer, auditor, sheriff, district attorney, assessor and tax collector, and they shall receive such compensation as provided by such special laws and shall receive no other compensation.

Repeal.

SEC. 106. All laws or parts of laws in conflict herewith are hereby repealed.

SEC. 107. This act to take effect and be in force from and after its passage.

APPROVED, *January* 15, 1875.

AN ACT

CREATING THE BOARD OF COUNTY COMMISSIONERS AND DEFINING THEIR DUTIES AND POWERS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Board, how constituted.
3. Special elections.
5. Duties to begin, when.
6. Quorum.
7. Regular sessions.
8. Special sessions.
9. Clerk and his duties.
11. Compensation of clerk.
12. Leaves of absence.
13. Public buildings.
14. Tax payers petition for.
15. Commissioners to be canvassers.
16. To act as Board of Equalization.
17. Special duties of Board.
19. Power of Boards.
20. Limits of power.
21. Warrants.
25. Appeals.
26. How taken.
29. Vacancies filled.
30. Compensation of Commissioners.
31. To administer oaths.

Board to consist of.

SECTION 1. There shall be in each of the counties of this Territory a Board of County Commissioners to consist of three members, and to possess such qualifications, and have such powers, as hereinafter given.

SEC. 2. Said Commissioners shall be qualified electors of their respective counties, and shall be elected by the qualified electors, at each general election, to be elected at large, and to hold office for two years, and until their successors are elected and qualified. Shall be electors.

SEC. 3. It shall be the duty of the Commissioners to order all special elections; *provided*, should two vacancies occur in the Board of Commissioners, at the same time, it shall be the duty of the clerk to call said special elections. Special elections.

SEC. 4. Before any Commissioner shall enter upon the duties of his office, he shall take and subscribe an oath, or affirmation before some person authorized to administer the same, faithfully to discharge the duties of a Commissioner of the county in which he resides, and deposit the same with the clerk of the Board of County Commissioners of his county, to be by him filed in his office. Oath.

SEC. 5. The Commissioners elected under this act, shall qualify and enter upon the duties of their office on the first Monday in January next after their election. Duties to begin.

SEC. 6. A majority of the Board shall constitute a quorum for the transaction of business; and all sessions of the Board shall be public. They shall elect one of their number as chairman of the Board, who shall sign their record of proceedings; in the absence of the chairman, their proceedings shall be signed by both of the members present. Quorum.

SEC. 7. The Board of Commissioners shall hold four sessions annually, at the county seat of their respective counties, commencing on the first Monday of January, April, July and October. At all of which, they shall transact any business which may be required by law. Regular sessions.

SEC. 8. The Board of Commissioners are hereby authorized to hold special sessions in case they may think the business of the county requires the same. Five days notice from any two of the Commissioners to the third to be served by the clerk of the Board of Commissioners, in writing, setting forth in said notice the necessity for such special session shall be considered a sufficient call for such session. The Board of Commissioners may adjourn from any regular or special meeting to meet at some subsequent time, to be named in their adjournment, to transact unfinished business, in all cases their journal shall show the nature of the business to be transacted at such adjourned meeting, and no other business shall be transacted, except to receive and approve the bonds of county or precinct officers, or to fill vacancies in county Special sessions.

or precinct offices. The clerk of the Board of Commissioners shall give five days public notice of all special or adjourned meetings, stating explicitly the business to be transacted at such meetings, by posting three notices in conspicuous places, one of which shall be on the court house door.

Clerks.

SEC. 9. The auditors in and for the several counties of this Territory shall be clerks of the Board of Commissioners in their county, and attend all their meetings, and shall proclaim at the opening of such session in front of the court house or office wherein such session is being held. that the Board of Commissioners are now in session.

Duties of clerk.

SEC. 10. It shall be the duty of the clerk to write in a suitable book, kept for that purpose, all the proceedings of the Board of Commissioners. And when there is a division on any question, he must enter on the journal how each member voted. When accounts have been allowed by the Board, he will state on the journal, on what fund warrants are to be drawn in payment of the same. He shall receive and place on file, all bills or accounts presented against the county, all books, papers, records, and accounts of the Board, shall be kept at the office of the clerk of the Board, and shall at all times (except when in use by the clerk) be open to public inspection free of charge.

Compensation of clerk

SEC. 11. The clerk shall receive for his services as clerk of the Board of Commissioners a compensation to be fixed by the Board. In no case to exceed three hundred dollars a year, or less than one hundred. And no further compensation shall be allowed the clerk for any services connected with the business or proceedings of the Board; *provided*, in counties where the auditor receives an annual salary, he shall receive no additional compensation for services as clerk of the Board of Commissioners.

Leaves of absence.

SEC. 12. The Board of Commissioners of any county in this Territory, may grant to any county officer of their respective counties (except the probate judge) or a member of the Board of Commissioners of such county leave of absence from their county and the Territory, for a period not exceeding ninety days, during which time the absence of such officer so obtaining leave from the county and Territory, shall not work a forfeiture of the office to which he may have been elected or appointed: *provided*, that before the granting of such officer's leave of absence, he shall have appointed a deputy to perform the duties of his office, as by statute in such cases made and provided, and shall have presented to, and filed with the Board of Commissioners of his county, the written consent of each and every person liable on the official bond of such officer, that such leave of absence may be granted.

Public buildings.

SEC. 13. The Board of Commissioners shall cause to be erected and furnished, a court house, jail, and such other public buildings as may be necessary, and shall when necessary provide offices for the sheriff, the county auditor, clerk of the district court, and county treasurer, and shall draw warrants on the general county fund in payment of the same, *provided*, that the contract, for the erection of any such building be let out after thirty days notice for proposals to the lowest bidder, who shall give ample security for the completion of any contract, he may make respecting the same, and *provided*, no contract shall be let under the provisions of this section for the erection of county buildings, where the cost of same exceeds one thousand dollars. They shall also provide and furnish, all necessary books, for records for the county auditor, county assessor, and collector, clerk of the district court, probate court and the Board. They shall also provide stationery for the use of the Board and so much as is necessary for the use of the other county officers in the transaction of official business—where no fee or salary is provided by law.

Tax-payers may peti- for new buildings.

SEC. 14. When a petition signed by at least one-third of the tax payers, who are qualified voters of any county in this Territory, is presented to the Board of Commissioners of their county at any regular meeting, asking that a court house, jail, or new ones, or other public buildings, and improvements be built for the use and benefit of the county, the cost of which will exceed one thousand dollars, the Board shall not act upon the said petition until the next regular meeting; and at least for four weeks before the next meeting. The clerk of the Board shall give notice by publication in a newspaper or otherwise, as ordered by the Board, of the presentation of said petition, and the nature and cost of said buildings, or improvements contemplated, and that the same will be acted upon by the Board at their next regular meeting, if the Commissioners deem the interest of the county demand it, the Board shall order the said improvements, or buildings to be made, and in their opinion, they are needful or necessary and the expense is not too great, they may order the same to be made and shall thereupon advertise for sealed proposals for making said improvements, or erecting said buildings, said notice for sealed proposals, shall be given by the clerk in a newspaper or otherwise, as ordered by the Board, for at least thirty days, and shall contain explicit specifications of the improvements or buildings to be made, and shall state the day when said proposals shall be opened, and proposals may be received until the opening of the session on the day the proposals are to be opened and the said proposals shall be opened and considered publicly and to the lowest responsible bidder, unless they all be rejected, which the Board shall have power to do if they are too high, and may proceed to advertise again or let the same by private contract, provided it be for a less sum than that proposed by the lowest bidder. The person or persons awarded the contract, shall give a good and sufficient bond to be approved by the Commissioners for the completion of the contract, according to the specifications. The same may be paid for by warrants upon the proper fund or by the levying of a special tax, not exceeding fifty cents on each one hundred dollars of assessable property, to be paid into a special fund for that purpose; against which warrants may be drawn in payment for buildings or other improvements constructed or made under the provisions of this section.

Canvassers of votes.

SEC. 15. The Board of Commissioners in the several counties of this Territory, shall act as a Board of canvassers in accordance with the provisions of the election law, and shall on the tenth day after any general or special election, or sooner if all the returns be received, and all the Commissioners are present, proceed publicly at their office, to open the returns, and make up, abstracts of the votes cast at said election.

The abstract for votes for delegate to congress, shall be on one sheet. The abstract of votes for members of the Territorial council and assembly shall be on one sheet, the abstract of votes for district officers shall be on one sheet, and the abstract of votes for county and precinct officers shall be on one sheet, and shall declare the result of the election held in their respective counties, and cause a certificate of election to be given by their clerk, to any person or persons elected to a county or precinct office within their county. And shall certify to each of said abstracts, and shall require their clerk to forward the said abstracts, or copies thereof, as directed and provided in the general election law.

Board of equalization.

SEC. 16. The Board of Commissioners of the several counties, shall constitute a Board of Equalization, of which the clerk of the Board of County Commissioners shall be clerk. The Board of Equalization shall meet on the third Monday in August of each year, and shall continue in session until all the business of equalization, presented to them is disposed of. The Board of Commissioners shall at their regular meeting in October, (in addition to their regular business,) act upon all business of equalization presented to them, and shall continue in session until the same is disposed of. The Board shall have power to increase or reduce the assessed value, of any real or personal property, whenever they believe the same has been assessed at less or more than its actual value. The Board shall in all respects, act in conformity with the revenue laws of the Territory.

Special duties of commissioners.

SEC. 17. The Board shall require of all county or precinct officers, entrusted with the collection, safe-keeping, or disbursement of the public funds a quarterly statement of all collections and disbursements made by them during the preceding quarter; and may examine their books, accounts and vouchers; and may require a more specific statement at any time; and shall see that all such county and precinct officers faithfully perform the duties required of them by law, and shall prosecute them for any delinquencies. They shall require their clerk at the close of every session to furnish them with a list of all bills and accounts of every nature, approved by them at said session, giving the name of each person in whose favor an account or bill of any kind or nature has been allowed, with the amount allowed him and out of what fund the same is to be paid. They shall compare their list with the record of their proceedings, and if not found correct, they shall make it so, and shall certify to said list, and shall file it with the county treasurer, who shall place it on file in his office, and the treasurer is forbidden and shall pay no warrant drawn on any fund in the county treasury that does not correspond with the files furnished him by the Board; *provided*, that warrants drawn, or bills or accounts allowed, previous to the passage of this act, are exempt from the foregoing provisions as regarding their being placed on file in the county treasurer's office.

Approve bonds.

SEC. 18. The Board shall approve the official bonds of county and precinct officers, and may require new bonds of any such officers, with additional sureties whenever they deem the same for any reason necessary.

The Board shall have discretion as to the responsibility of any bondsmen, if, in the opinion of the Board a man is already on bonds to the amount of his worth, or accessable property, or if in their opinion the property of a man is not accessable or available, they may reject him, on any bond, which he may wish to sign, notwithstanding the party may make affidavit that he is worth the amount without incumbrance for which he wishes to become responsible as a bondsmen.

Power of boards.

SEC. 19. The Board of Commissioners shall have power and jurisdiction within their respective counties:

First—To make orders respecting the property of the county in conformity with any law of this Territory, and to take care of and preserve such property.

Second—To examine, settle and allow all accounts legally chargeable against the county and to levy for the purposes prescribed by law, such amount of taxes on the assessed value of real and personal property in the county as may be authorized by law.

Third—To examine and audit the accounts of all officers intrusted with the collection, safe keeping or disbursement of any money or property of the county, or of the public revenue within the county, or of any money appropriated by law or otherwise for the use and benefit of the county.

Fourth—To lay out, control and manage public roads and thoroughfares, in the county, according to the provisions of law and to make such orders as may be necessary to carry its control and management into effect.

Fifth—To grant licenses to persons or associations, to construct and keep "toll roads, bridges, or ferries," in the county, and to establish and change the rates of toll to be collected thereon, and fix the amount of license tax to be paid therefor, in the mode and subject to the limitation prescribed by law.

Sixth—To take care of and provide for the indigent sick, idiotic and insane of the county, under the regulations of law.

Seventh—To divide the county into precincts for justices of the peace and constables, and to change the boundaries of the same and create new precincts as the convenience of the county may require.

Eighth—To establish and change election precincts, and to appoint judges of elections, and designate places for holding the same.

Ninth—To control and manage the property, real and personal belonging to the county, to receive by donation any money or property for the use and benefit of the county, and to lease or purchase any real or personal property absolutely necessary for the use of the county.

Tenth—To sell at public auction at the court house after thirty days public notice, and cause to be conveyed away property belonging to the county and not necessary for its use. The proceeds of such sale to be applied to the use of the general fund.

Eleventh—To control the prosecution and defence, to all suits to which the county is a party.

Twelfth—To act as Board of Canvassers and Equalization, and to do and perform all other acts required of them by the organic act, and existing laws of Idaho Territory, not in conflict with this act.

Canvassers and board of equalization.

SEC. 20. The powers and jurisdiction of the Board of County Commissioners are hereby limited by the following restrictions and prohibitions:

First—They shall not, for any purpose, contract debts, or liabilities except those provided for, or fixed by, or in pursuance of law.

Second—They shall not allow any account or claim against the county, except such as are legally chargeable against the county by express provision of law. No warrant shall be drawn by the Auditor in violation of this provision, and if so drawn, the county treasurer, is hereby prohibited from paying the same.

Third—They shall not allow any account, or cause or permit any warrant to be issued to any county or precinct officer entrusted with the collection, safe keeping or disbursement, of the public funds, who has failed to make any statement or settlement of his accounts, as required by law, or who has failed to account for and pay over the public funds received by him when, and as required by law, or who is in any way a delinquent or defaulter in his trust, nor to any delinquent tax payer.

Fourth—They shall not allow any account, or cause or permit any warrant to be drawn in favor of any person who is liable, either as principal or surety, upon any official or other bond, cognizable by the Board after a breach of such bond, or upon any recognizance in a criminal action, or proceeding in the county after the forfeiture of such recognizance.

Fifth—They shall not allow any account or claim for services to a deputy of any officer or cause or permit any warrant to be drawn therefor, except to and through, and in the name of his principal.

Sixth—They shall not provide any stationery for any officer, to be used for any purpose or act for which such officer is allowed a fee by law.

Seventh—They shall not provide fuel to be used in any public office, except during office hours, and not more than is necessary for that time.

Eighth—They shall make no contract for any purpose on behalf of the county, nor grant any privilege or franchise, in which any member of the Board is directly or indirectly interested, as a party thereto, and any contract or grant made, in contravention of this provision shall be void; *provided*, the Board may allow any just claim of a member of the Board which accrued before the commencement of his term, and may allow for compensation, due for services as member of the Board, and for mileage, as provided for by law.

Ninth—They shall not transfer any money from one fund to another, nor in any manner divert the money in any fund to other uses except in cases expressly provided and permitted by law, nor make any preferred creditor, nor cause any warrant to be drawn payable out of its order except on the order of the district court in cases provided by law, and the county treasurer shall, in all things observe these instructions.

Tenth—They shall not allow any account or item of account, which shall not be presented with the proper verification within one year after the same accrued.

Bills of particulars.

SEC. 21. Every warrant or bill against the county, presented to the Board, shall be in form of a bill of particulars, stating particularly the items of account, when and for what the same accrued, and shall be accompanied by the affidavit of the claimant that the services were performed, or the commodities were furnished as therein stated, and shall be filed with the clerk, at least two days before the first day of the term. When an account or item of account, has once been presented to the Board and been by them disallowed, the same shall not be again presented to the Board for allowance, and the Board shall take no further action upon the same, except on remittitur after the appeal, and then only in conformity to the mandate of the court.

Items.

SEC. 22. Every such account or bill shall contain all items of accounts and demands which the party claims against the county, up to the time of filing the same, and in case of a public officer, shall include and specify claims for services of any of his deputies as well as of himself.

Tax payer may oppose allowance.

SEC. 23. Any person who is an elector or tax payer of the county, may appear before the Board of County Commissioners and oppose the allowance of any claim or demand made against the county, and all pertinent testimony he may produce shall be heard and considered; and in all cases when a claim or order is opposed, the clerk shall enter on the record the vote of each member.

SEC. 24. Any person liable to be injuriously affected by any order of the Board, may appear before the Board and oppose such order, and his objections, and proofs shall be heard and considered.

Appeals.

SEC. 25. Appeals may be taken from orders of the Board of County Commissioners as follows:

First—From any order by any person aggrieved thereby.

Second—From an order allowing any account or demand against the county by any elector or tax payer of the county, on the ground of improper or excessive allowance.

Third—From any order prejudicially affecting the public interest, by either the district attorney or Probate judge of the county on behalf of the county.

Appeals: how taken.

SEC. 26. Such appeal shall be taken within twenty days after the entry or the order of decision, the appeal shall be taken by delivering to the chairman of the Board personally, or filing with its clerk, a written notice, stating the facts and of such appeal, and serving a copy thereof upon any person having a beneficial interest in said order or decision, (*provided*, that when there are more than one jointly interested, service on any one of them shall be sufficient), and filing with the clerk of the Board an undertaking in the sum of three hundred dollars, with two sufficient sureties to be approved by the clerk, verified and conditioned as in appeals in certain cases, for the payment of costs on appeal. *Provided*, that in an appeal by the district attorney or the probate judge on behalf of the county, no undertaking shall be required.

Effect of appeal.

SEC. 27. On appeals, the case shall be heard anew, and the court may affirm, reverse, annul or modify the order, or decision appealed from and shall tax the costs to the appellant in case the same is affirmed.

Transcript.

SEC. 28. The clerk of the Board on receiving the notice and the undertaking (where the same is required) shall certify to the district court a transcript of the order appealed from, the notice of appeal, the undertaking, and any account, bill or contract upon which the order is predicated.

Vacancy in precinct offices.

SEC. 29. Whenever any vacancy shall occur in, or the qualified electors of the county or precinct, shall fail to elect to any county or precinct officer, the Board shall at any meeting appoint some suitable person, an elector of the county or precinct to fill the vacancy until the election and qualification of a successor. *Provided*, that should a vacancy occur in the Board of Commissioners, the other two members may, at any meeting fill the vacancy, by appointment of some suitable person, and provided further, if there should occur two or more vacancies on the Board, the vacancies shall be filled by a special election, called by the clerk of the Board, upon due notice given as provided for in the general election law which shall govern the said special election, and the clerk of the Board, and the probate judge shall canvass the votes of said special election.

Pay of commissioners. SEC. 30. Each member of the Board of County Commissioners shall receive for his services, two hundred dollars annually, and he shall receive twenty-five cents per mile necessarily traveled, in going to and returning from the county seat, to attend the sessions of the Board. *Provided*, that no charge shall be made for more than one trip going from and returning to the residence of such Commissioner, at each term held; and *provided*, should any member of the Board of Commissioners fail to be in attendance at any regular, special or adjourned session of the Board of Equalization or Board of Canvassers, the sum of six dollars shall be deducted from his salary, for each day's non-attendance during said session of the Board. *Provided*, that section five of an act to amend an act fixing the fees and salaries of certain officers of Boise county, approved December 28th, 1874, be and the same is hereby repealed, *provided*, further, that the first clause of this section shall not apply to Shoshone county.

Oaths. SEC. 31. Each of the County Commissioners and the clerk of the Board, are hereby authorized, and empowered to administer and certify all oaths, or affidavits, necessary in the discharge of the duties or business of their office.

Repeal. SEC. 32. All acts and parts of acts repugnant to or inconsistent with the provisions of this act, are hereby repealed.

SEC. 33. This act shall take effect and be in force, from and after the date of its passage.

APPROVED *January* 15, 1875.

AN ACT

TO ESTABLISH A PUBLIC SCHOOL SYSTEM AND TO PROVIDE FOR THE MAINTAINANCE, AND SUPERVISION OF PUBLIC SCHOOLES.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

Section 1. Territorial fund.
2. County fund.
7. Controller to be superintendent.
8. Duties of superintendent.
9. Printing.
10. Duties of treasurer.
12 Superintendent to report.
15. Duties of Territorial treasurer.
16. County superintendent
17. Duties of.
19. Apportionment.
20. Duties of county superintendent.
21. New school districts.
22. School elections.
24. Duties of county treasurer.
26. Election of trustees.
28. Duties of trustees.
29. Disorderly pupils.
30. Enumeration.
33. Duties of justices herein.
35. Duties of teachers.
38. Beginning of school year.

Territorial fund.

Section 1. That all money accruing from the sale of all lands, heretofore given, or which may hereafter be given, by the congress of the United States for school purposes in said Territory, and all moneys that may hereafter be given and appropriated by the congress of the United States for school purposes, unless by special provision, shall be appropriated for the establishment of a university, or other high school, together with any moneys by legacy or otherwise donated for educational purposes, and appropriated to the general school fund, and all moneys accruing to the Territory from unclaimed moneys of the estates of deceased persons, shall be set apart, and shall constitute an irreducible and indivisible Territorial general school fund, the interest only, accruing from which, shall be appropriated to the respective counties in the manner hereinafter specified and directed.

County School Fund.

County fund.

SEC. 2. For the purpose of establishing and maintaining public schools in the several counties of the Territory, it shall be the duty of the County Commissioners of each county at the time of levying the taxes for county and Territorial purposes to levy a tax of not less than two mills nor more than five mills on each and every dollar of taxable property in their respective counties for school purposes.

How assessed.

SEC. 3. That said taxes shall be assessed and collected in each county, as other taxes on property for county and Territorial purposes.

No fees allowed.

SEC. 4. That the tax collectors and treasurers of the respective counties, shall not receive any fees or percentage for such collecting, holding and disbursing the moneys so received, from said taxes, and set apart for public school purposes, but that they shall perform such duties without fee or reward.

Fund account.

SEC. 5. That said moneys so collected, are hereby set apart and appropriated for the support of the public schools of the respective counties, and shall be paid over by said collectors, or other officers receiving such moneys, to the county treasurers of the respective counties, and by said treasurers shall be placed in a separate account, to be called the county school fund, and shall only be drawn from each county treasury, as in the manner hereinafter prescribed and provided.

Fines.

SEC. 6. That for the further support of public schools there shall be set apart by the county treasurer of each county, the same to be placed by the respective county treasurers in the county school fund as a part of the same, all moneys arising from fines for a breach of any of the penal laws of this Territory.

Territorial Superintendent.

Controller to be superintendent.

SEC. 7. The Territorial controller, is hereby made and constituted, ex-officio Territorial superintendent of public instruction.

Sec. 8. It shall be the duty of the Territorial superintendent of public instruction:

Duties of Territorial superintendent.

First—To exercise a general supervision over the public schools of the Territory.

Second—To prepare and have blanks printed for the reports of county superintendents, trustees, census marshals and teachers, and also blanks for teachers' registers, and blank orders from trustees to county superintendents for warrants and a sufficient number of the copies of this act for the supply of the public school officers, and distribute the same to the respective county superintendents.

Printing.

Sec. 9. All necessary expenditures of money incurred by the superintendent for the printing of said blanks, and copies of this act, shall be paid out of any funds in the Territorial treasury, not otherwise appropriated; *provided*, however, that the said printing shall be procured under the same provisions, as other public printing of the Territory is procured. *Provided*, it does not exceed the sum of three hundred dollars per annum.

Duties of Territorial treasurer.

Sec. 10. It shall be the duty of the Territorial treasurer to apportion to the several counties the amount of money in the school fund of the Territory, subject to be apportioned, to which each shall be entitled, under the provisions of this act, in proportion to the number of children residing therein between the ages of five and eighteen years, as shown by the last previous report of the county school superintendent or other officer charged therewith, and make a record of such apportionment in a book of record to be kept for that purpose, and to furnish to the Territorial treasurer, to each county treasurer and to each county school superintendent an abstract of such apportionment, and at the same time to furnish to each county treasurer a warrant for the amount of such apportionment, to which his county may be entitled, drawn on the Territorial treasurer in conformity with provisions of this act.

Same.

Sec. 11. And the said Territorial treasurer shall without unnecessary delay transmit to each county treasurer, the amount due his county as exhibited by the said warrants; and each county treasurer shall furnish to the Territorial superintendent a receipt for the same with duplicate to the Territorial treasurer, which receipts the said superintendent and treasurer shall file in their respective offices.

Superintendent to report.

Sec. 12. The Territorial superintendent shall present to the legislative assembly during the first week of each regular session, a full report of the condition of the public schools in the Territory, to-wit: the number of schools in each county, the number of children between five and eighteen years, in each county, the number of such attending schools established under the provisions of this act, the amount of school money apportioned to each district, the amount of school moneys received by each county from county and district taxes, and contributions, the amount expended in each county in accordance with the provisions of this act, and the balance remaining of the school fund in each county treasury at the close of each school year; and also the receipts and expenditures of the Territorial school fund, together with the balance in said fund at the end of each school year.

He may make suggestions.

SEC. 13. He shall also present such suggestions as he may deem necessary in relation to the construction of school houses, the improvement and the management of the public schools, to the qualification of teachers, the ways and means for raising funds for the support of public schools and for the promotion of the general interest of education throughout the Territory.

Deliver all papers.

SEC. 14. And he shall at the close of his official term deliver to his successor all property, books, maps, reports, records and all documents and papers received by him, for the use of or belonging to his office, for which he shall take a receipt of his successor, and file the same in the office of the Territorial secretary.

Territorial Treasurer; duties of.

Duties of Territorial treasurer.

SEC. 15. It is hereby made the duty of the Territorial treasurer to receive and hold as special deposit, and place in a separate fund to be called the Territorial general school fund, all moneys designated and set apart for that purpose as specified in section one of this act. For the safe keeping and disbursement of which moneys, he shall be responsible on his official bond.

County superintendent.

SEC. 16. The auditor of each county is hereby made ex-officio county school superintendent, who in addition to his oath of office as auditor shall qualify to perform faithfully the duties of school superintendent for his county; *provided*, that the probate judge of the counties of Alturas and Boise shall be ex-officio superintendents of public schools, of said named counties. *Provided*, further, that the provisions of this section shall not take effect in Boise and Lemhi counties until the first Monday in January, 1877.

Duties of Co. superintendents.

SEC. 17. It shall be, and is hereby made the duty of the county superintendent of public schools, upon receiving notice from the county treasurer as provided in this act to apportion the public school moneys, both county and Territorial, reported by said county treasurer to be in the county treasury of each county among the several school districts of his county in the following manner to-wit: one half of the whole amount reported by said county treasurer, he shall divide equally among the several organized districts, that have complied with the provisions of this act, the remaining one half of said whole amount he shall apportion per capita among the several districts in proportion to the number of children in each district as shown by the last report of the school census marshal of each district, and credit each district with the amount to which such apportionment entitles it; such apportionment he shall place upon record in his office and forthwith furnish a copy thereof to the county treasurer and he shall report the portion of each district to the clerk of the Board of Trustees thereof.

Apportionment.

SEC. 18. The county superintendent shall make such apportionment on the first Monday in March of each year and quarterly thereafter.

Apportionment.

SEC. 19. He shall have power and it shall be his duty to draw his warrant on the treasurer of his county in favor of and deliver the same to the person entitled to receive the same; *provided*, that no such warrant shall be drawn in favor of any school district until full and complete returns shall have been made to him by the same as required by law and the certificate of the district Board of Trustees, showing for what purpose in accordance with the provisions of this act the money is required. And *provided* further, that no school district shall receive a warrant for a larger amount than there is cash in the treasury to the credit of said district, and that no district shall receive any of the public school moneys in which there shall not have been reported at least ten children by the school census marshal at the last report nor in which there shall not have been taught a public school for at least three months within the year in which the application for such money is made; *provided*, that each county shall constitute at least one school district irrespective of the number of children of school age in said county.

Blanks.

SEC. 20. It is hereby made the duty of the county school superintendent,

First—To distribute promptly such blanks, reports, forms, and laws, as shall be received by him from the Territorial superintendent of public instruction for the use of school trustees, census marshals, and teachers, and any other officers entitled to receive the same.

Second—To keep on file in his office the reports of the school trustees, census marshals, and teachers, and to record all his official acts in a book to be provided for that purpose.

Third—To make a full report annually on or before the fifteenth day of October in each year for the school year ending on the 31st day of August next previous thereto to the Territorial superintendent, a statement of the number of school houses in each district in his county, the number of children of school age, and the number of pupils attending in each district in his county, the number of libraries and the number and character of volumes in each library; in how many districts a school has been taught during the past year and for how long a time, and what school books have been used in each district, what proportion of children of school age in each district has attended the school during the past year, the amount of money paid for teachers for teaching and the expense as nearly as may be of conducting each district school. This statement together with such other information and suggestions as he may deem proper or important to the cause of education in his county. And he shall forward to the Territorial superintendent of public instruction on or before the first day of November of each year in order that the same may be embodied in his report to the legislative assembly.

Fourth—To appoint school trustees for newly organized districts and to fill by appointment all vacancies, that may occur by death, resignation, or otherwise, or when the voters of the districts fail to elect trustees in accordance with the provisions of this act, and to draw his warrant on the county treasurer in favor of the Board of Trustees for the purchase of school books which may be furnished by said trustees to indigent children of the district making the same payable out of the public school moneys in the county school treasury apportioned to said district.

Fifth—To collect by process of law all penal fines not paid over by justices of the peace or other officers required, to pay the same as required in section thirty-three of this act, and the same shall be recovered by an action in which the people of the United States in the Territory of Idaho by the county school superintendent of public instruction shall be plaintiff and the justice of the peace or other officer neglecting or refusing to pay over the said moneys shall be deemed defendant.

New districts.

SEC. 21. Whenever at least four heads of families petition the county superintendent for the organization of a new school district, or for the subdivision of, or change in the boundaries of an old one, the superintendent shall, without unnecessary delay, act upon said petition, and may approve, modify or disapprove of the said petition; if he approve, he shall proceed to organize the new district, and he shall appoint three trustees for the same as provided in this act. His disapproval shall only be upon the grounds that such organization or change of boundary would be unjust to individuals or the community.

Election returns.

SEC. 22. All school election returns shall be made to the respective county school superintendents, which returns they shall file in their offices.

Disposition of records.

SEC. 23. The county superintendent shall, at the close of his official term deliver to his successor, all records, documents, books, and papers belonging to his office, and take a receipt for the same, which shall be filed in the office of the county treasurer.

County Treasurer, Duties of.

Duty of county treasurer.

SEC. 24. It shall be the duty of the treasurer of each county to receive and hold as special deposit all moneys belonging to the public schools of his county in accordance with the provisions of this act, and pay them over only on the warrant of the county superintendent.

To report.

SEC. 25. And he shall on the first Monday in February of each year, and quarterly thereafter make, to the county superintendent a statement of the amount of money in the school fund then in the treasury, subject to be apportioned, after having deducted the amount due the county superintendent for his salary. Such statement shall also show the amount received and derived from each source constituting said county school fund.

Trustees, Election and Duties of.

Election of trustees.

SEC. 26. There shall be an election held annually on the first Monday in April, in each year, at each district school house in the Territory; at which election there shall be elected, by the qualified voters of the several districts, three trustees for each district, who shall hold their office for a term of one year, and until their successors shall be elected and qualified.

Elections; how held.

SEC. 27. At said elections the poll shall be opened by one of the Board of Trustees, or by any voter, if no trustee be present, at one o'clock, and closed at five o'clock P. M., of the same day, said election shall be conducted generally as other county elections, except that one judge and one clerk shall constitute a board of election, and that any one of the trustees may, and it is hereby made their duty to qualify said judge and clerk to perform the duties of said Board of election, to make returns of such elections to the county superintendent immediately, which returns shall be filed in the office of the same.

Duties of trustees.

SEC. 28. It shall be the duty of the trustees of each district,

First—To employ teachers and fix their salaries, and they shall have the power to discharge any teacher for any neglect of duty or any cause that in their opinion renders his or her services unprofitable as a teacher.

Second—To visit the schools in their districts from time to time, and not less than once a month each.

Third—Any two of said trustees shall constitute a quorum for the transaction of business.

Fourth—At their first meeting after their election and qualification, one of their number shall be chosen clerk of their board, and their proceedings of all meetings shall be in writing and shall be kept in a book, shall be signed by the clerk thereof, and such book shall be a public record.

Fifth—They shall have charge of all school property in their districts, and shall as such trustees, have power to receive in trust, all real estate or other property conveyed to said school district, and to convey by deed duly executed, and delivered, all the estate or interest of their districts in any school house or site directed to be sold by any vote of their district, and all conveyances made to said board, shall be made in their corporate name, to trustees, of school district No.——County——Idaho Territory and to their successors in office.

Sixth—Said trustees shall have further power, when directed by a vote of their district, to purchase, receive, hold and convey real and personal property for school purposes, and to hold, purchase, hire, and repair school houses, and supply the same with necessary furniture, in accordance with the provisions of this act and to fix the location of school houses, *provided*, that no trustee shall be pecuniarily interested in any contract, made by the Board of Trustees, of which he is a member; and any contract made in violation of this section shall be null and void.

Seventh—And they shall, by giving ten days notice, in writing posted in three conspicuous places in their districts, call, at any time, for a meeting of the inhabitants of their district, for the purpose of deciding, by the votes of such inhabitants, whether or not a special tax, specifying the rate proposed to be collected, shall be levied on said district, for the building, or the repairing of school houses, or for the support of public schools in the respective districts.

Eighth—The voting at such elections shall be by ballot, on which ballot shall be written, or printed. "Tax Yes," or "Tax No," and if a majority of the votes polled at such elections shall be in favor of such tax, the Board of Trustees shall be empowered, and it is hereby made their duty, to levy, and cause to be collected, a special tax at the rate specified in their notice upon the taxable property in their district, as shown by the last annual assessment by the county assessor to be obtained by the trustees, from the county clerk of their county, and the said Board of Trustees shall have power to appoint judges and clerk of said election and a collector of said tax; and before entering upon the discharge of his duties shall take the oath of office, and give bond in double the estimated amount of money to come into his hands, with good and sufficient sureties, and when he shall have been so qualified, he shall have the same power to enforce the collection of said tax as is given to tax collectors and sheriffs, in the collection of Territorial and county taxes, and said collector shall be entitled to, and receive five per cent. thereon, for collecting the same; *provided*, that when any repairs shall not exceed twenty-five dollars, in value, the trustees shall fix upon, levy and collect a rate bill in the manner as herein provided in case of articles furnished the schools by the trustees.

Ninth—The trustees of the respective districts shall furnish all things, not otherwise herein provided for, necessary for the use of and comfort of the school or schools of their district, such as stoves, brooms, buckets, black-boards, fuel, and privies, and for this purpose they shall have power to levy and collect a rate bill, to be paid by all the parents or guardians of all pupils attending said schools, in proportion to the number of pupils sent to said schools, by each parent or guardian but no pupil shall be prohibited from attending said schools on account of his or her parent or guardian's inability to pay such rate, and the clerk of the Board of Trustees shall have the same power to enforce the collection of the amounts of said rate bill as is given to tax collectors and sheriffs, in the collection of Territorial and county taxes.

Tenth—The trustees of each district shall make full statement in writing annually on the first day of October, to the county school superintendent of their respective counties, of all matters pertaining to their schools, such as the building and repairing school houses, the cost of the same, and from what source paid, the number of months schools have been taught in their districts during the preceding school year, what the monthly salary paid teachers, and generally such information as will promote the interest, and advance the cause of education.

Disorderly pupils. SEC. 29. It is hereby made the duty of the trustees of the respective districts, on receiving the report from any teacher, of the disorderly or bad conduct of large pupils, to decide how such insubordinate pupils shall be punished, or whether they shall be dismissed from school. It shall also be the duty of the Board of Trustees to examine teachers as to their proficiency in the art of teaching, and as to their knowledge of the primary branches of English education; they shall grant certificates in accordance with his or her competency; but no teacher shall receive a certificate of qualification unless he or she shows a proficiency in orthography, reading, writing, arithmetic, geography, English grammar, and the history of the United States. In all cases when trustees have any doubt of their ability to conduct such examination, they may call on any person in the district to assist them.

Enumeration. SEC. 30. The said trustees shall on the first Monday of July of each year, which shall be and is hereby declared to be a day for the regular meeting of said Board, appoint a census marshal who shall proceed immediately after he is appointed to take a correct enumeration of all the children in his district between the ages of five and eighteen years of age; after the census marshal shall have finished his enumeration, he shall forthwith report the same to the trustees of his district, who shall hold a meeting to receive the same and said trustees shall cause a true and certified copy of said census together with a certificate of the marshal's having performed his duties, which census or enumeration and certificate, shall be forthwith transmitted to the county school superintendent of his county.

Pay of census marshal SEC. 31. For such services well and faithfully performed, said census marshal shall be allowed as full compensation, ten cents for each child so enumerated, and the clerk of the Board of Trustees shall furnish said census marshal, a certificate of the performance of his duty; and upon presenting of such certificate the county superintendent shall draw his warrant upon the county treasurer for the amount so allowed in favor of said census marshal, and shall charge the same against his district.

Oath of trustees.

SEC. 32. Trustees shall qualify within fifteen days after their election, by taking an oath or affirmation, faithfully to discharge the duties of their office to the best of their ability, and to promote the interest of education in their district, which oath shall be administered by the county superintendent, or any civil officer authorized to administer oaths.

Justices of the Peace, Duties of, &c.

Duties of justices of the peace.

SEC. 33. All moneys arising from fines as provided for in this act, are hereby required to be paid over, by justices of the peace, or other officer receiving the same to the county treaurer within thirty days after collection.

Penalty.

SEC. 34. Any justice of the peace, or other officer neglecting or failing to comply with the provisions of section thirty-three of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be fined in any sum not less than one hundred dollars, or by imprisonment in the county jail, not less than three months or both such fine and imprisonment.

Teachers, Duties of, &c.

Duties of teachers.

SEC. 35. Teachers of the public schools shall be furnished with a school register by the trustees of the respective districts, for the purpose of registering the names of his or her pupils, and their daily attendance at school, and at the close of the session, said register shall be delivered to the clerk of the Board of Trustees of the district, and the teachers shall also be furnished by the trustees, with a blank report, which he shall fill up according to the heading of the same, and transmit to the county superintendent of his county, at the close of the session or term and no teacher shall be authorized to draw his salary until such report shall have been received by said county superintendent.

Miscellaneous.

Prohibitions.

SEC. 36. No books, papers, tracts or documents, of a political, sectarian, or denominational character shall be used or introduced in any school established under the provisions of this act, and any and every political sectarian, or denominational doctrine is hereby expressly forbidden to be taught therein, nor shall any teacher, nor any district receive any of the public school moneys, in which the schools have not been taught in accordance with the provisions of this act.

Outside pupils.

SEC. 37. Trustees shall determine whether pupils outside of their district shall be permitted to attend school in such district and upon what terms.

Beginning of school year.

SEC. 38. The school year of each and every county within this Territory, shall commence on the first Monday in April of each year.

Pay of county superintendents.

SEC. 39. The compensation of the county school superintendent of the several counties, shall be paid annually on the first Monday of October, out of the county school fund; and before receiving said compensation, said county superintendent shall have received a certificate from the Territorial school superintendent, that his duties have been faithfully performed during the last school year, upon which the Board of County Commissioners of the respective counties shall draw a warrant upon the county school fund for such amount as they may audit, and allow, not to exceed five dollars for each school district in his county, legally organized, and complying with the provisions of this act. *Provided*, that in the county of Lemhi the provisions of this section, so far as it relates to the compensation of school superintendent, shall not take effect until the first day of January, A. D. 1877.

SEC. 40. An act entitled an act to establish a common school system, and to provide for the maintenance and supervision of public schools, passed on the 13th day of January, A. D. 1871, and all other acts and parts of acts passed by any legislative body of this Territory, on the subject above designated, prior to or since said date of January 13th, 1871, be and the same are hereby repealed.

SEC. 41. This act to be in full force and effect, from, and after its approval by the Governor.

APPROVED, *January* 15, 1875.

AN ACT

IN RELATION TO COUNTY SHERIFFS, DUTIES OF, ETC.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Sheriff, duties of.
5. Reception of papers, copy, etc.
6. Return of, to proper court.
7. Papers returnable out of the county, how made.
8. When sheriff liable for neglect of duty.
9. Neglect to pay over, penalty for.
10. Where office to be kept, when to be kept open.
12. How papers to be served on sheriff.
13. Sheriff shall appoint under sheriff, shall be in writing, etc.
15. Duties and power of under sheriff.
16. Misconduct or neglect, breach of bond.
17. County jail kept by sheriff, may appoint keeper.
19. County commissioners to provide safe keeping for prisoners.
20. Prisoners to be kept apart from each other.
21. Probate judge may designate when county has no jail.
22. Appointment, copy to be served on sheriff of county designated
23. Probate to revoke when jail erected.
24. County clerk shall serve copy on sheriff.
25. Prisoners to be removed when jail on fire.
26. Contagious diseases, probate judge may order removal.
27. Physicians, who to appoint, sheriff, when liable to prisoner.
29. Temporary guard, expense of.
30. Food, clothing, etc; provided by sheriff.
31. Security may be required when defendant imprisoned in civil cases.
32. Prisoner committed for examination to be actually confined, etc
33. Escape of prisoner, etc; who shall be liable, rescue of.
35. Return of prisoner to jail, no cause of action against sheriff.
36. County recorder to issue certificate to new sheriff, etc.
37. Former sheriff to deliver to new sheriff county property, prisoners, etc.
38. Written transfer, new sheriff to acknowledge, etc.
39. Former sheriff shall complete processes begun.
40. New sheriff may take possession when former sheriff refuse.

SECTION 41. Commitment under authority of the United States.
43. Resistance, officer may call assistance.
45. Direction to sheriff must be in writing to excuse liability.
46. Sheriff committed to custody of coroner, etc.
47. Officer required to perform service for Territory.
48. Justification of officer in execution of process when defect in.
49. Officer bound to show papers to interested party.
50. Sheriff to act as crier to court, etc.
51. Sheriff not to have attorney for partner.
52. When sheriff liable to party injured.
53. Wilful negligence or oppression, fine, etc.
54. When sheriff party to action, vacancy in office of sheriff coroner to act.
56. Power of coroner, when sheriff and coroner, both parties.
58. Elisor, powers and duties of.

Sheriff in each of the counties.

SECTION 1. There shall be a sheriff in each of the counties of this Territory, to be elected every two years, in accordance with, and in the manner provided by law.

Oath of office, and official bond.

SEC. 2. Before entering upon the discharge of his duties, each sheriff shall take the oath prescribed by law, and give a bond to the Territory for the faithful discharge of the duties of his office in such amount as shall be provided by law.

SEC. 3. The sheriff shall be a conservator of the peace in his county.

Duties of sheriff.

SEC. 4. It shall be the duty of the sheriff within his county:

First—To arrest and take before the nearest magistrate, for examination, all persons who commit, or attempt to commit, a public offence in his presence, or who have committed a public offence.

Second—To prevent and suppress all affrays, breaches of the peace, riots and insurrections which may come to his knowledge.

Third—To execute the process, warrants and orders of the courts of justice, or of judicial officers, when delivered to him for that purpose.

Fourth—To attend in person or by deputy all courts, except justices', at their respective terms held within his county, and to obey their lawful orders and directions.

Fifth—To serve, at the request of a party to an action or proceeding, notices and papers therein.

Sixth—In the execution of these duties, to command the aid of as many male inhabitants of his county as he may think proper, and necessary.

Process; how endorsed, &c.

SEC. 5. When any process, writ or order shall be delivered to the sheriff, to be executed, he shall endorse upon it the year, month, day and hour of its reception, and shall give to the person delivering it, if required, on payment of his fee, a written memorandum, signed by him, specifying the names of the parties in the process, writ or order, the general nature thereof, and the time it was received. He shall also deliver to the party served a copy thereof, without charge to such party.

To execute process with diligence; liable to damages in case of failure.

SEC. 6. A sheriff, to whom any process, writ or order, or paper, shall be delivered, shall execute it with diligence, according to its command or as required by law, and shall return it, without delay, to the proper court or officer, with his certificate endorsed thereon of the manner of its service or execution; or if not served or executed, the reason of his failure. For a failure to do so, he shall be liable, in an action, to the party aggrieved, for the sum of two hundred dollars, and for all damages sustained by him.

How writ or process may be returned to court out of county.

SEC. 7. When any process, writ, order or paper is to be returned to a court, officer or person out of the county, the sheriff may forward it by mail; and on proof that it was mailed in season, properly directed, he shall be discharged from liability for a failure to return it.

When liable on official bond for neglect of duty.

SEC. 8. If the sheriff to whom a writ of execution is delivered shall neglect or refuse, after being requested by the creditor or his attorney, to levy upon or sell any property of the party charged in the writ, which is liable to be levied upon and sold, he shall be liable on his official bond to the creditor for the value of such property.

In case of neglect of officer to pay over moneys, &c

SEC. 9. If a sheriff shall neglect or refuse to pay over, on demand, to the person entitled, any money which may come into his hands, by virtue of his office, after deducting his legal fees, the amount thereof, with twenty-five per cent. damages, and interest at the rate of one per cent. per month from the time of demand, may be recovered by such person from him and the sureties on his official bond, on application upon five days notice to the court in which the action is brought, or the judge thereof, in vacation.

Shall keep an office.

SEC. 10. The sheriff shall keep an office at the county seat of his county.

Office hours to be kept by sheriff.

SEC. 11. The sheriff's office shall be kept open on all days except Sundays, between the hours of nine and twelve in the forenoon, and between one and four in the afternoon.

Papers, how served on sheriff.

SEC. 12. Service of a paper upon the sheriff may be made by delivering it to himself in person, or by delivering it to the under sheriff, or to one of his deputies, or to a person belonging to and in the office during office hours; or if no such person be there, by leaving it in a conspicuous place in the office.

Appointment of under sheriff; when and how made.

SEC. 13. Each of the sheriffs, within thirty days after the passage of this act, and each sheriff hereafter elected, immediately after entering upon the duties of his office, shall appoint one under sheriff, to hold the office during his pleasure, and shall make a similar appointment as often as a vacancy occurs in the office of under sheriff; he may also appoint as many deputies as he thinks proper, to hold them in office during his pleasure.

Appointments, how made, and where filed; oath of office

SEC. 14. The appointment of an under sheriff and a deputy sheriff, and also the revocation of any such appointment, shall be in writing, and filed in the office of the county recorder. The sheriff may require of each person appointed under sheriff, and of each of his deputies, a bond, with sureties, for the faithful performance of his duties; but the sheriff shall be responsible for the official acts of the under sheriff and his deputies. Before entering upon their respective duties, the under sheriff and each of his deputies shall take the oath prescribed by law, which shall be endorsed on their respective appointments.

Powers and duties of under sheriff, &c.

SEC. 15. During the absence of the sheriff from his county, or when the sheriff, from sickness, or any other cause is unable to discharge the duties of his office, the under sheriff shall exercise the powers, and perform the duties of that officer, and at other times shall perform such services, relating to the duties of the sheriff, as may be required of him by that officer. A deputy sheriff shall execute all orders, writs, and process of a court, or judicial officer, delivered to him for that purpose, and may perform every act incidental thereto.

Neglect of duty, a breach of official bond of sheriff.

SEC. 16. The neglect or misconduct in office, of the under sheriff, or any deputy, shall be a breach of the official bond of the sheriff by whom they were appointed.

Sheriff to keep county jail, purposes of.

SEC. 17. The county jail shall be kept by the sheriff, and used as a prison:

First—For the detention of persons committed as witnesses in a criminal action.

Second—For the detention of prisoners committed for trial for a public offence.

Third—For the confinement of persons committed upon civil process; and

Fourth—For the confinement of persons sentenced to imprisonment therein upon conviction for a public offence, or for examination, charged with having committed a public offence.

Sheriff responsible for acts of jailor.

SEC. 18. The sheriff shall in all cases be held responsible on his official bond, for the acts of such person or persons under whose charge he may place the county jail, or the county or Territorial prisoners, placed under his keeping by law, or by legal authority.

County jail to be provided by County Commissioners of each county

SEC. 19. The County Commissioners of each county shall cause a county jail to be erected at the county seat, in case such jail has not been already erected, or shall provide some suitable place for the safe keeping of prisoners, which place, until the erection of a jail, is considered, in this act, as the county jail. The county jail, or the place provided as such, shall contain a sufficient number of rooms:

First—For the confinement of persons committed for trial in criminal actions, separate and distinct from persons under sentence.

Second—For the confinement of persons under sentence.

Third—For the confinement of persons committed on civil process, or as witnesses in criminal actions, separate from those mentioned in the last two subdivisions.

How prisoners confined.

SEC. 20. Persons committed on criminal process and detained for trial, persons convicted and under sentence, and persons committed upon civil process, shall, on no pretence whatever, be kept or put in the same room, nor shall male and female prisoners (except husband and wife) be kept and put in the same room.

In case of no jail in county, probate judge to order how prisoners be kept.

SEC. 21. Where there is no jail in the county, or where the jail becomes unfit or unsafe for the confinement of prisoners, the probate judge may, by a written appointment filed with the county recorder, designate the jail of a contiguous county, for the confinement of the prisoners of his county, or of any of them, and may at any time modify or annul the appointment.

How appointment and order of judge served.

SEC. 22. A copy of the appointment, certified by the county recorder, shall be served on the sheriff and keeper of the jail designated, who shall receive into his jail and safely keep all prisoners authorized to be confined therein, pursuant to the last section, and who shall be responsible for the safe keeping of the persons so committed, in the same manner and to the same extent as if he was sheriff of the county for whose use his jail is designated, and with respect to the persons so committed he shall be deemed the sheriff of the county from which they were received.

When jail erected order may be revoked.

SEC. 23. When a jail shall be erected in the county for whose use the designation was made, or its jail shall be rendered fit and safe for the confinement of prisoners, the probate judge of that county shall by a written revocation filed with the county recorder thereof, declare that the necessity for the designation has ceased, and that it is revoked.

Order of revocation served on sheriff.

SEC. 24. The county recorder shall immediately serve a copy of the revocation upon the sheriff of his county who shall thereupon remove his prisoners to his own jail.

SEC. 25. When a county jail, or building contiguous to it, is on fire and there is reason to apprehend that the prisoners may be injured, or endangered, the sheriff, or jailor, shall remove them to a safe and convenient place, and there confine them so long as it may be necessary to avoid the danger.

When pestilence or contagious disease is manifest prisoners may be removed.

SEC. 26. When a pestilence or contagious disease breaks out in or near a jail, and the physician thereof certifies that it is liable to endanger the health of the prisoners, the probate judge may by a written appointment, designate a safe and convenient place in the county, or the jail of a contiguous county, as the place of their confinement. The appointment shall be filed in the office of the county recorder, and shall authorize the sheriff to remove the prisoners to the place or jail designated, and there confine them until they can be safely returned to the jail from which they were taken.

Physician, when may be appointed to jail.

SEC. 27. The County Commissioners of each county shall, from time to time, appoint a physician to the jail of the county where pestilence or contagious disease exist in or near said jail, or whenever any of the persons confined therein shall be affected with any disease contagious in its nature.

When papers must be delivered to prisoners.

SEC. 28. A sheriff or jailor upon whom a paper in a judicial proceeding, directed to a prisoner in his custody, is served, shall forthwith deliver it to the prisoner, with a note thereon of the time of its service. For a neglect to do so, he shall be liable to the prisoner for all damages occasioned thereby, and for a wilful omission in this respect shall be deemed guilty of a misdemeanor.

Sheriff may employ extra guard for jail.

SEC. 29. The sheriff, when he shall deem it necessary, may, with the assent in writing of the probate judge, or, in a city, of the mayor thereof, employ a temporary guard for the protection of the county jail, or for the safe keeping of prisoners, the expenses of which shall be a county charge.

Prisoners received by, and provided for by sheriff.

SEC. 30. The sheriff shall receive all prisoners committed to jail, by any competent authority; and shall provide them with necessary food, clothing, and bedding, for which he shall be allowed a reasonable compensation to be determined by the County Commissioners, and, except as provided in the next section, paid out of the county treasury.

Persons committed on civil process; expense of; how kept.

SEC. 31. Whenever a person is committed upon process in a civil action or proceeding, except when the people of this Territory are a party thereto, the sheriff shall not be bound to receive such person unless security be given on the part of the party at whose instance the process is issued, by a deposit of money to meet the expenses for him of necessary food, clothing, and bedding; or to detain such person any longer than these expenses are provided for. This section shall not apply however, to cases where a party is committed as a punishment for disobediance to the mandates, process, writs, or orders of the court.

Prisoners committed for trial or examination; how kept.

SEC. 32. A prisoner committed to the county jail for trial or examination, or upon conviction for a public offence, shall be actually confined in the jail until he is legally discharged; and if he be permitted to go at large out of the jail, except by virtue of a legal order or process, it shall be an escape, and the sheriff, or jailor permitting it shall be deemed guilty of a misdemeanor, and may be fined in any sum not exceeding five thousand dollars.

When sheriff liable for escape.

SEC. 33. A sheriff who suffers the escape of a person arrested in a civil action, without the consent or connivance of the party in whose behalf the arrest or imprisonment was made, shall be liable as follows:

First—When the arrest is upon an order to hold to bail, or upon a surrender in exoneration of bail before judgment, he shall be liable to the plaintiff as bail.

Second—When the arrest is on execution, or commitment to enforce the payment of money, he shall be liable for the amount expressed in the execution or commitment.

Third—When the arrest is on execution or commitment other than to enforce the payment of money, he shall be liable for the actual damages sustained.

Fourth—The sheriff, upon being sued for damages for an escape, may exhibit proofs in mitigation and exculpation.

When liable for rescue of person, arrested in civil action.

SEC. 34. The sheriff shall be liable for a rescue of a person, arrested in a civil action, equally as for an escape: *provided*, he may show circumstances in exculpation.

Return of prisoner to jail, no cause of action.

SEC. 35. An action shall not, however, be maintained against the sheriff, for a rescue, or for an escape of a person arrested upon an execution or commitment, if after his rescue or escape, and before commencement of the action, the prisoner return to the jail, or be retaken by the sheriff.

County recorder to issue certificate to new sheriff, &c.

SEC. 36. When a new sheriff is elected and has qualified, and given the security required by law, the county recorder shall give a certificate of that fact under his seal of office, upon theservice of which on the former sheriff his powers shall cease, except as otherwise provided in this act.

Sheriff to deliver county property to successor, &c.

SEC. 37. Within three days after the service of the certificate upon the former sheriff, he shall deliver to his successor:

First—The jail of the county, with its appurtenances, and the property of the county therein.

Second—The prisoners then confined in the county jail.

Third—The process, orders and other papers in his custody, authorizing or relating to the confinement of the prisoners.

Fourth—All process and orders for the arrest of a party, and all papers relating to the summoning of a grand or trial jury, which have not been fully executed.

Fifth—All executions, attachments, and final process, except those which he has executed or has begun to execute, by the collections of money or a levy on property.

Sheriff to acknowledge transfer of same.

SEC. 38. He shall also at the same time, deliver to the new sheriff a written transfer of the property process, papers, and prisoners delivered, specifying the process or order by which each prisoner delivered was committed and detained. The new sheriff shall thereupon acknowledge, in writing, a duplicate of the transfer, the receipt of the property, process, papers, and persons therein specified.

Sheriff to complete process begun, &c.

SEC. 39. Notwithstanding the election and qualification of a new sheriff, the former sheriff shall return all process and orders before and after judgment, which he has fully executed, and shall complete the execution of all final process which he has begun to execute, and the collection of all taxes put into his hands for collection previous to the expiration of his term of office.

When sheriff refuse to serve process.

SEC. 40. If the former sheriff refuse or neglect to deliver to his successor the jail, process, papers, and prisoners in his charge, the new sheriff may notwithstanding, take possession of the jail, and of the prisoners confined therein, and the probate court, or the probate judge, may, upon application, order the delivery of the process and papers.

SEC. 41. The sheriff shall receive and keep in the county jail, any person who shall be committed thereto by process or order issued under the authority of the United States, until he be discharged according to law, as if he had been committed under process issued under the authority of this Territory, provided provisions be made by the United States for the support of such prisoner.

Commitment under authority of United States.

SEC. 42. A sheriff or jailor to whose custody a prisoner is committed, as provided in the last section, shall be answerable for his safe keeping, in the courts of the United States, according to the laws thereof.

Shall be answerable for safe keeping, &c.

SEC. 43. When an officer finds, or has reason to apprehend, that resistance will be made to the execution of process delivered to him for service, he may command as many male inhabitants as he may think proper, and any military company or companies in the county, armed and equipped to assist him in overcoming the resistance, and, if necessary, in seizing, arresting and confining the resisters, their aiders and abettors, to be punished according to law.

Resistance, officer may call assistance.

SEC. 44. Every able-bodied male person over the age of eighteen, and under the age of sixty, commanded by an officer to assist him in the execution of process, as provided in the preceding section, who, without lawful cause, refuses or neglects to obey the command, may be fined by the court, upon proof thereof, in a sum not exceeding two hundred dollars.

Person refusing to assist officer, may be fined, &c.

SEC. 45. No direction or authority by a party or his attorney to a sheriff or to an under or deputy sheriff in respect to the execution of process, or return thereof, or to any act or omission relating thereto, shall be available to discharge or excuse the sheriff from a liability for neglect or misconduct, unless it be contained in a writing signed by the party to be charged or affected thereby, or his attorney.

Direction to sheriff to excuse liability must be in writing.

SEC. 46. When the sheriff is committed to the custody of another sheriff or of a coroner, under an execution or commitment for not paying over money received by him by virtue of his office, and committed for sixty days, his office shall be declared vacant.

When sheriff committed to custody of coroner, &c.

SEC. 47. When the sheriff or other officer is legally required to perform a service in behalf of the people of this Territory, which is not chargeable to his county or a private person, his account and claim for compensation therefor, shall be filed with the Territorial controller, and by him transmitted to the legislature with his report thereon, at its first session after the rendition of such

When sheriff or officer perform service for Territory.

service for its action thereon, in allowing, modifying or rejecting the said account or claims.

Justification of officer in execution of process, &c

SEC. 48. A sheriff or other ministerial officer shall be justified in the execution of all process and orders, regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued.

Officer to exhibit papers to interested party.

SEC. 49. The officer executing a process, warrant or order of any kind, shall be bound then and at all times subsequent, as long as he retains it, upon request, to show the same, with all papers attached, to any person interested therein.

Sheriff to act as crier, make proclamation, &c.

SEC. 50. The sheriff or deputy in attendance upon court shall act as the crier thereof, to call the parties and witnesses and all other persons bound to appear at the court, and make proclamation of the opening and adjournment of the court, and of any other matter under its direction.

Not to have attorney for partner.

SEC. 51. A sheriff, under sheriff or deputy sheriff, is prohibited, during his continuance in office, from acting or having a partner who acts as an attorney or counsellor.

When liable to party injured.

SEC. 52. Every sheriff shall be liable to the party injured, on his official bond, for neglect or mal-performance of any duty imposed upon him by law.

Negligence or oppression by officer, fine for, &c.

SEC. 53. Every sheriff who is guilty of wilful negligence in the discharge of his duties, or who, in the execution or under color of his office, is guilty of any oppression or extortion, shall, upon conviction thereof, be fined in any sum not exceeding five thousand dollars, and may be removed from office.

When sheriff party to action.

SEC. 54. When the sheriff is a party to an action or special proceeding, the process and orders therein, which it would otherwise be the duty of the sheriff to execute, shall, except when otherwise provided by this act, be executed by the coroner of the county.

In case of vacancy coroner to act, &c.

SEC. 55. In case of a vacancy in the office of sheriff by death the process and the duties of sheriff shall devolve upon the coroner and be executed by him, until a new sheriff be appointed or elected and qualified, and has given security, to be approved as required by law.

Powers of coroner when acting as sheriff.

SEC. 56. Whenever a coroner acts as sheriff he shall be invested with the powers, duties and responsibilities of the sheriff, and shall be entitled to the same fee for similar services.

When sheriff and coroner are parties.

SEC. 57. Process and orders in an action or proceeding may be executed by a person residing in the county designated by the court, the judge thereof, or a probate judge and denominated an elisor in, in the following cases:

First—When the sheriff and coroner are both parties.

Second—When either of these officers is a party, and the process or order are against the other, for a disobedience of an order or process therein.

Third—When either of these officers is a party, and there is a vacancy in the office of the other; or where it shall be made to appear, by affidavit, to the satisfaction of the court in which the suit or proceeding is pending, or the judge thereof, that either of the said officers by reason of any bias, prejudice or other cause, would not act promptly and impartially.

Elisor; when to be appointed; duties of.

SEC. 58. When process is delivered to an elisor, he shall execute in the same manner as the sheriff is required to execute similar process in other cases and shall be allowed to charge and receive the same fees for such services as are allowed to sheriffs.

Proceedings in case of arrest of sheriff and coroner.

SEC. 59. If the sheriff, on being arrested by a coroner, or if the sheriff, or coroner on being arrested by an elisor, or if another person in an action in which both the sheriff and coroner are plaintiffs upon an order of arrest in a civil action, neglect to give bail, or make a deposit of money instead thereof, or if he be arrested on execution against his body, or on a warrant of attachment, he shall be confined in a house other than that of the sheriff, or the county jail, in the same manner as the sheriff is required to confine a prisoner in the county jail; the house in which he is thus confined shall there upon become for that purpose the county jail.

Powers and duties of elisors.

SEC. 60. An elisor appointed to execute process and orders in the case mentioned in this act, shall be invested with the powers, duties, and responsibilities of the sheriff, in the execution of the process, or orders, and in every matter incidental thereto.

Fees of Sheriff.

Services, and fees defined.

SEC. 61. The sheriff shall be allowed and may lawfully charge, demand and receive the following fees for his services in discharging the duties imposed upon him by law: for serving a summons and complaint, or any other process by which action or proceeding is commenced, on every defendant, one dollar; for traveling in making such service, per mile, in going only, to be computed in all cases from the court house of the county, fifty cents; *provided*, that if any two or more parties are required to be served in the same action at the same time, one mileage only shall be charged; for taking bond or undertaking, in any case in which he is authorized to take the same, one dollar; for copy of any writ, process or other paper, when demanded and required by law, for each folio, thirty cents; for serving every notice, rule or order, fifty cents; for serving a subpœna for each witness summoned, fifty cents; for traveling, per mile, in serving each subpœna or venire, in going only, fifty cents; but when two or more witnesses or jurors live in the same direction, traveling fees shall be charged only for the most distant; for serving an attachment on property, or levying on execution, or executing an order of arrest, or order for the delivery of personal property, with traveling fees, as on summons, one dollar; for making and posting notices, and advertising property for sale on attachment or execution, or under any judgment or order of sale, not to include the cost of publication in newspaper, thirty cents per folio; for commissions for receiving and paying over moneys on execution or process, when property has been levied or advertised and sold, on the first one thousand dollars, three per cent.; on all sums above that amount, one per cent.; for commissions for receiving and paying over moneys on execution, without levy, or when the property levied on shall not be sold, on the first one thousand dollars, ten per cent.; and one per cent. on all over that sum. The fee herein allowed for the levy of an execution and for the advertising, and for making or collecting the money on an execution, shall be collected from the defendant, by virtue of such execution, in the same manner as the sum therein directed to be made; for drawing and executing and acknowledging every sheriff's deed, to be paid by the grantee, five dollars; for serving a writ of possession or restitution, and putting any person entitled into possession of premises, and removing the occupant, five dollars; for travel in the service of any process not hereinbefore provided for, for each mile necessarily traveled, in going only, fifty cents; for attending, when required, on any court, in person or by deputy, for each day of such court so required, five dollars, to be paid out of the county treasury; for bringing up a person on *habeas corpus*, to testify or answer in any court, or for examination as to the cause of his arrest or detention, or to give bail, two dollars. He shall also be allowed his actual necessary expenses in taking possession of property under attachment or execution, or other process, and of preserving the same; for holding each inquest or trial of right of property, when required, to include all time and service in the matter, except mileage, four dollars; for making every arrest in a criminal proceeding, two dollars; for serving such subpœna in criminal proceedings, twenty-five cents; for executing every sentence of death, seventy-five dollars; for summoning a grand jury of twenty-four, twelve dollars; for summoning each trial jury of twelve persons, four dollars; for each additional juror, twenty-five cents; for service of any process in criminal cases, for each mile necessarily traveled, twenty cents; and the same mileage for taking prisoners before a magistrate or to prison. In serving subpœnas or venires in criminal cases, he shall receive mileage for the most distant only, when witnesses or jurors live in the same direction; for all services in justices' courts, the same fees allowed to constables.

Certain acts repealed.

SEC. 62. That all acts original amendatory or supplemental in their nature, touching the office, duties and compensation of sheriffs in the counties in this Territory passed prior to this act are hereby repealed.

APPROVED *January* 13, 1875.

AN ACT

RELATIVE TO COUNTY AUDITORS AND RECORDERS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Recorder. ex-officio auditor, term of office.
2. Office to be open except on certain days; office hours.
3. Record books; manner of record.
4. Official oath and bond.
5. Bond, where filed and recorded.
6. Appointment of deputy.
7. When deputy to perform the duties.
8. Expenses of office; custody of records.
9. Instruments to be recorded.
10. Separate records to be kept.
11. Indexes of records; how arranged; what to contain.
12. Index when in same volume, must be separate. Index of deeds of sheriffs, etc.
13. Instruments, how filed and recorded; date, etc.
14. Indorsements on instruments recorded.
15. Search and abstracts of records.
16. Recorder liable for neglect of duty or defects in records, etc
17. When guilty of misdemeanor; liable in damages for altering record.
18. Copies and transcripts to be received in evidence.
19. Records, etc., to be open to inspection.
20. Recorder, when commissioners to appoint.
21. Records, etc., to be delivered to successor.
22. May take acknowledgments, etc.
23. Pre-payment of fees.
24. To be ex-officio auditor.
25. Auditor to keep account and to file treasurers' receipts.
26. Auditor to draw orders on treasurer.
27. Orders to be numbered, and an account thereof kept.
28. To settle with county treasurer as prescribed by law.
29. Fees of recorder and auditor.

Recorder, ex-officio auditor, term of office.

Sec. 1. There shall be elected in each of the organized counties in this Territory, at the general election for county officers, a county recorder, who shall be ex-officio county auditor, and who shall keep his office at the county seat of the county in which he shall have been elected, and whose term of office shall be two years, and shall continue to hold and act as such officer until his successor shall have been elected and qualified.

Office to be open except on certain days; office hours

Sec. 2. The office of recorder shall, in all the counties of this Territory, be kept open for the transaction of business every day in the year, except Sundays, Christmas, New Years, and the fourth of July, between the hours of nine and twelve in the forenoon, and one and four in the afternoon.

Record books; manner of record.

Sec. 3. The recorder shall keep suitable and well bound books, wherein shall be recorded in a fair, large and legible hand, all instruments of writing authorized and required to be recorded.

Official oath and bond.

Sec. 4. Before entering upon the duties of their offices, the recorder shall take the oath of office, as prescribed by law, and shall enter into bonds in the penal sum of not less than five, nor more than thirty thousand dollars, at the discretion of the County Commissioners of the respective counties, with two or more sureties, to be approved by said County Commissioners, conditioned for the faithful performance of their duties as recorders.

Bond, where filed and recorded.

Sec. 5. The bonds of the recorders of the different counties of this Territory shall be filed by the probate judge in the probate court of said county and a copy thereof duly recorded by the county recorder, and shall be when so recorded, fully attested by the probate judge. Said record shall be sufficient as matter of evidence in any court of justice in this Territory to prove the validity of such Board, and the due execution thereof.

Appointment of deputy.

Sec. 6. The recorder of each county may appoint a deputy, who shall hold his office during the pleasure of the recorder. Such appointment shall be in writing, filed and recorded in the office of the recorder; and the recorder so appointing him, and his sureties, shall be responsible for the faithful performance of his duties by such deputy.

When deputy to perform duties

Sec. 7. In case of a vacancy in the office of recorder, or his absence or inability to perform the duties of his office, the deputy shall perform the duties of recorder during the continuance of such vacancy, absence or inability.

Expenses of office.

Sec. 8. It shall be the duty of the Board of County Commissioners to audit and settle the accounts of the recorders of their respective counties, for books purchased for the use of their offices, and to allow such sums as may be just as rent for their offices, provided suitable rooms be not provided by the different counties. The recorders shall have the custody of, and shall safely keep and preserve all the books, records, maps and paper deposited in their offices.

Instruments to be recorded.

SEC. 9. It shall be the duty of the recorders, upon the payment of their fees for the same, to record, or cause to be recorded correctly, in large and strongly bound books, and in a fair, large and legible hand,

First—All deeds, mortgages on real estate, releases of mortgages, powers of attorney to convey real estate, and leases for a longer period than one year, which shall have been proved or acknowledged according to law.

Second—All certificates of marriages and marriage contracts.

Third—All wills admitted to probate.

Fourth—All official bonds required by law to be recorded in their offices.

Fifth—All notices of mechanics' liens.

Sixth—All transcripts of judgments which, by law, are made liens upon real estate.

Seventh—All notices of attachments upon real estate.

Eighth—All notices of the precedency of an action affecting real estate.

Ninth—All instruments describing or relating to the separate property of married women.

Tenth—All notices of pre-emption claims.

Separate records to be kept.

SEC. 10. The several classes of instruments of writing mentioned in the several subdivisions of the preceding section shall be recorded in separate books.

Index of records.

SEC. 11. Every recorder shall keep in separate volumes,

First—An index of deeds, labeled grantors, each page of which shall be divided into four columns, with heads to the respective columns, as follows: Names of grantors, names of grantees, date of deeds, where recorded.

Second—An index of deeds, labeled grantees, each page of which shall be divided into four columns, with heads to the respective columns as follows: Names of grantees, names of grantors, date of deeds, when recorded.

Third—An index of mortgages labeled mortgagors, each page of which shall be divided into five columns, with the heads to the respective columns, as follows: Names of mortgagors, names of mortgagees, date of mortgages, where recorded, when discharged.

Fourth—An index of mortgages, labeled mortgagees, each page of which shall be divided into five columns, with heads to the respective columns as follows: Names of mortgagees, names of mortgagors, date of mortgages, where recorded, when discharged.

Fifth—An index of releases of mortgages, labeled releases of mortgagees—mortgagors, each page of which shall be divided into six columns, with heads to the respective columns, as follows: Parties releasing, to whom releases are given, date of releases, where releases are recorded, date of mortgages released, where mortgages released are recorded.

Sixth—An index of releases of mortgages, labled releases of mortgages, mortgagees, each page of which shall be divided into six columns, with heads to the respective columns, as follows: Parties whose mortgages are released; parties releasing; date of releases; when recorded, date of mortgages released; where mortgages released are recorded.

Seventh—An index of powers of attorney, labled powers of attorney, each page of which shall be divided into five columns, with heads to the respective columns, as follows: Names of parties executing the powers; to whom powers are executed; date of recording; where powers are recorded.

Eighth—An index of leases, labled lessors, each page of which shall be divided into four columns, with heads to the respective columns as follows: Names of lessors; names of lessees; date of leases; when and where recorded.

Ninth—An index of leases, labled lessees, each page of which shall be divided into four respective columns, as follows: Names of lessees; names of lessors; date of leases; when and where recorded.

Tenth—An index of marriage certificates, labled marriage certificates, men; each page of which shall be divided into six columns, with heads to the respective columns, as follows: Men married; to whom married; when married; by whom married; where married; where certificates are recorded.

Eleventh—An index of marriage certificates, labled, marriage certificates, women; each page of which shall be divided into six columns, with heads to the respective columns, as follows: Women married, (under this head placing the names of the women), to whom married; when married; by whom married; where married; where certificates are recorded.

Twelfth—An index of assignments of mortgages and leases, labled assignments of mortgages and leases, assignors, each page of which shall be divided into four columns, with heads to the respective columns, as follows: Assignors, assignees, instruments assigned, date of assignment, when and where recorded.

Thirteenth—An index of assignments of mortgages and leases, labled assignments of mortgages and leases; assignees; each page of which shall be divided into five columns, with heads to the respective columns as follows: Assignees; assignors; when and where recorded.

Fourteenth—An index of wills, labled, wills, each page of which shall be divided into four columns, with heads to the respective columns, as follows: Names of testators; date of wills; date of probate; when and where recorded.

Fifteenth—An index of official bonds, labled, official bonds, with each page divided into five columns, with heads to the respective columns, as follows: Names of officers; names of offices; date of bonds; amount of the bonds, when and where recorded.

Sixteenth—An index of notices of mechanics' liens, labeled mechanics' liens. with each page divided into three columns, with heads to the respective columns, as follows: Parties claiming liens, against whom claimed, notices when and where recorded.

Seventeenth—An index to transcripts of judgments, labeled transcripts of judgments, with each page divided into seven columns, with heads to the respective columns, as follows: Judgment debtors, judgment creditors, amount of judgments, where recorded, when recorded, when transcript filed, when judgment satisfied.

Eighteenth—An index of attachments, labeled attachments, with each page divided into five columns, with heads to the respective columns, as follows: Parties against whom attachments are issued, parties issuing attachments, notices of attachments, when recorded, where recorded, when attachments discharged.

Nineteenth—An index of notices of the pendency of actions, labeled notices of actions, with each page divided into three columns, with heads to the respective columns, as follows: Parties to the actions, notices when recorded, where recorded.

Twentieth—An index of the separate property of married women, labeled separate property of married women, with each page divided in five columns, with heads to the respective columns, as follows: Names of married women, names of their husbands, nature of instruments recorded, when recorded, where recorded.

Twenty-first—An index of pre-emption claims, with each page divided into four columns, with heads to the respective columns, as follows: Claimants, notices when received, date of notices, when and where recorded.

Index, when in same volume must be separate.

SEC. 12. But the recorder may, in his discretion, keep in the same volume, any two or more of the indexes mentioned in section eleven of this act: *provided*, the several indexes be kept distinct from each other, and the volume be distinctly marked, on the outside, in such way as to show all the indexes kept therein. The names of the parties in the first column of the several indexes, shall be arranged in alphabetical order; and when a conveyance is executed by a sheriff, the name of the sheriff, and the party charged in the execution, shall both be inserted in the index; and when an instrument is recorded, to which an executor or administrator, or trustee, is a party, the name of such executor, administrator, or trustee, together with the name of the testator or intestate or party for whom the trust is held, shall be inserted in the index.

Instruments, how filed and recorded, date, etc.

SEC. 13. When any instrument, paper, or notice, authorized by law to be recorded, shall be deposited in the recorder's office for record, the recorder, or his deputy shall endorse upon the same, the time when it was received, noting the year, month, day, hour and minute, of its reception, and shall record the same, or cause the same to be recorded, without delay, together with the acknowledgments, proofs, and certificates, written over or under the same, with the plats, surveys, schedules, and other papers thereto annexed, in the order, and as of the time when the same was delivered for a record, in a fair and a large and legible hand, and shall note at the foot of the record, the year, month, day, hour, and minute, of its reception, and the name of the person at whose request it was recorded.

Indorsements on instruments recorded.

SEC. 14. The recorder shall endorse upon each instrument, paper and notice, the book, and page or pages of the book in which it is recorded, and the year, month, day, hour, and minute when received; and after the same is recorded, shall deliver it, upon request, to the party leaving the same for record or to his order.

Search and abstract of records.

SEC. 15. It shall be the duty of recorders, upon the application of any person, and upon the payment or tender of the legal fees thereof, to make searches for conveyances, mortgages, and all other instruments, papers, or notices, recorded or filed in their respective offices, and to furnish a certificate thereof, stating the names of the parties to such instruments, papers and notices, the dates thereof, the year, month, day, hour and minute they were recorded or filed, the extent to which they affect the property to which they relate, and the books, and page or pages, where they are recorded.

Recorder liable for neglect of duty, or defects in records, etc.

SEC. 16. If any recorder to whom any instrument proved or acknowledged according to law, or any paper or notice which may by law be recorded, shall be delivered for record, shall—

First—Neglect or refuse to record such instrument, paper or notice, within a reasonable time after receiving the same; or,

Second—Record any instrument, papers, or notices, writing, in any other manner than is hereinbefore directed; or if any recorder—

First—Neglect or refuse to keep in his office such indexes as are required by this act, or to make the proper entries therein; or,

Second—Neglect or refuse to make the searches and give the certificates required by this act, or if such searches or certificates be incomplete and defective in any important particular affecting the property in respect to which the search is requested, he shall be liable to the party aggrieved for double the amount of the damages which may be occasioned by such neglect or refusal, or by such incompleteness or defect in the searches and certificates and an action may be brought on his official bond by the party aggrieved.

When guilty of misdemeanor.

SEC. 17. If any recorder shall wilfully neglect or refuse to perform any of the duties required of him by this act, or shall wilfully perform them in any other manner than is required by law, he shall be deemed guilty of a misdemeanor in office, and on conviction thereof in any court of competent jurisdiction, may be punished by a fine in any sum not exceeding one thousand dollars, or by imprisonment for a period not exceeding six months, or by both such fine and imprisonment. If the recorder shall alter, change or obliterate any records deposited in his office, or insert any new matter therein, he shall be liable on his official bond to the party aggrieved, for double the amount of the damages which may be occasioned by such neglect, refusal, or alteration.

Copies and transcripts to be received in evidence.

SEC. 18. Copies of papers duly filed in the recorder's office and transcripts from the books of records kept therein, certified by the recorder to be full, true and correct copies or transcripts, shall be received in all courts, and in all actions and proceedings, with the like effect if the original instruments, papers and notices recorded or filed could be produced.

SEC. 19. All books of record, and all indices in the recorder's office, and all maps, charts, surveys, snd other papers, on file therein, shall, during all office hours, be open for the inspection of any person who may desire to inspect them, and may be inspected without charge, and the recorder shall arrange the books of record and indexes, in his office, in such suitable places as to facilitate their inspection.

Records, etc. to be open to inspection.

SEC. 20. Whenever the office of recorder, in any of the counties of this Territory, shall become vacant by death, removal out of the county, resignation, neglect to give bonds, or for any other cause, the Board of County Commissioners shall appoint some suitable person, possessing the qualifications of an elector, to fill such vacancy; and the person so appointed shall give bond and take the oath, in like manner as required of county recorder in the fourth section of this act, and shall hold his office until his successor is chosen and qualified. Such successor shall be chosen at the next general election.

Recorder, when commissioners to appoint.

SEC. 21. All county recorders, on going out of office, shall deliver to their successors, all books, papers, documents, maps, records, stationery and furniture, belonging to their respective offices, and in case of the death of any county recorder, his legal representatives shall in like manner deliver all books, papers, documents, maps, records, stationery and furniture that shall come into his or their possession, belonging to the recorder's office.

Records, etc. to be delivered to successor.

SEC. 22. The county recorders are hereby authorized and empowered to take within their respective counties the acknowledgment and proof of all instruments and papers which may be by law required, and shall have full power in other respects to administer oaths and take depositions and affidavits, etc.

May take acknowledgments, etc.

SEC. 23. The recorder shall not be bound to record any instrument, or file any paper or notice, or furnish any copies, or to render any service connected with the office, until his fees for the same, as prescribed by law, are paid or tendered.

Pre-payment of fees

SEC. 24. The recorders of the several counties of this Territory shall be ex-officio county auditors of their respective counties, until otherwise provided by law.

To be ex-officio auditor.

SEC. 25. The county auditor of each county shall keep an account current with the treasurer of his county; and when any person shall deposit with the auditor any receipt given by the treasurer for any money paid into the treasury, the auditor shall file each receipt in his office, and shall charge the treasurer with the amount thereof.

Auditor to keep an account, and file treasurers' receipts.

Auditor to draw orders on treasurer.

SEC. 26. All accounts, debts and demands justly charged against any county, and which are not directed by law to be settled and allowed by some other person or tribunal, shall be examined and settled by the auditor of such county; and for all such just demands against such county, the amount of which is fixed by law, the county auditor shall issue orders on the treasurer of such county, payable to the several persons entitled thereto.

Orders to be numbered, and accounts thereof kept.

SEC. 27. All orders issued by auditors, during the year, commencing with the first day of January in each year, shall be numbered progressively; and the number, date and amount of each, and the name of the person to whom payable, and the purpose for which it was drawn shall, at the time of issuing the same, be entered in a book, to be kept by the auditor for that purpose.

To settle with county treasurer as prescribed by law.

SEC. 28. The auditor shall make settlements with the county treasurer, at the time and in the manner prescribed by law, for all moneys received and disbursed by said treasurer, by virtue of his office.

Fees of recorder and auditor.

SEC. 29. The recorder and auditor may lawfully charge, demand and receive the following fees for services rendered in discharging the duties imposed upon him by law; for recording any instrument, paper or notice, when required, for each folio, thirty cents; for copies of any record or paper, per folio, twenty-five cents; for filing or receiving every instrument for record, and making the necessary entries thereon, twenty-five cents; for making the several indexes required, all the entries required of the filing and recording any instrument, paper or notice, for every such instrument, paper or notice, twenty-five cents; for every certificate under seal, to copies of papers or records in his office where required, fifty cents; for abstract or certificate of title, when required for each conveyance or incumbrance certified, fifty cents; for recording every town plat, for every course, twenty-five cents; for taking and writing acknowledgments, including seal for each signature, fifty cents; for filing certificates of sheriff's sale and entering and indexing minute thereof, fifty cents; for recording and indexing marriage certificate, one dollar; for filing and keeping each paper not required to be recorded, and endorsing the same, twenty-five cents; for making duplicate of taxes, or copies, thereof required, per folio, thirty cents; for filing treasurer's receipt and issuing license, to be paid by the party, fifty cents; for making exhibit of expenditures for past year, per folio, thirty cents; for each order for view of road, twenty-five cents; for taking bonds of county officers, and all other persons required by the Board of County Commissioners or by law to give bonds, each, one dollar; for taking official oaths of county officers and other persons, and certifying the same, fifty cents; for administering an oath, including jurat, if required, twenty-five cents; for each bond executed by the County Commissioners for the purchase of property, or other purpose, one dollar and fifty cents; for each deed executed by the county Commissioners, one dollar and fifty cents; for settlements of his accounts, or the accounts of any other county officer, one dollar; for each order drawn on county treasurer, twenty-five cents; for making final settlement of any account with the county, for each folio, thirty cents.

Special laws, regulating fees and salaries, to govern.

SEC. 30. That in all counties which have special laws regulating the fees and salaries, the county auditors and recorders of such counties shall have such fees and salaries as are provided by such special laws and be exempted from the provisions of this act so far as they conflict with the provisions of such special acts. And nothing in this act contained shall be so construed as to repeal any such special laws.

APPROVED, *January* 13, 1875.

AN ACT

CONCERNING CORONERS AND CONSTABLES.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Coroner to be elected; bond of.
2. When coroner to act as sheriff.
3. Duties, powers, and fees of, as sheriff.
4. Coroner's jury, when to be summoned.
5. Penalty, for juror failing to appear.
6. Jury, what to inquire into.
7. Witnesses, who to be, how summoned.
8. Witnesses, how punished for non-attendance.
9. Verdict and certificate upon inquisition.
10. Testimony to be written and filed.
11. When the inquisition to be delivered to a magistrate.
12. When coroner to issue warrant of arrest.
13. Form of warrant of arrest.
14. The warrant served as other warrants.
15. Time to deliver property found, to treasurer.
16. Duties of treasurer.
17. When money to be paid to representatives.
18. Statement of coroner to Commissioners.
19. When justice to act as coroner.
20. Justices to act as coroners.
21. Same fees.
22. Burial of deceased by coroner.
23. Fees of coroner.
24. Constable to be elected, bond of.
25. Duties and powers of constables.
26. Law relating to sheriffs, to govern.
27 Penalty for failing to return process.
28. Neglect to levy, liability therefor.
29. Failing to pay over money, liability therefor.
30. Liable on bond for all official acts.
31. Conservators of the peace.
32 Penalty for official misconduct.
33. Not to practice as an attorney.
34. Fees of constables.

Coroner to be elected; bond of.

SEC. 1. That there shall be elected by the qualified electors of each organized county of this Territory, at the same time and place as other county officers are elected, one county coroner, who shall discharge the duties of his office as herein prescribed: *provided*, that before he enter upon the discharge of the duties of his office, he shall take the oath of office prescribed by law, and give bond in such sum as the County Commissioners of his county may require.

When coroner to act as sheriff.

SEC. 2. The coroner shall perform the duties of sheriff in all cases where the sheriff is interested, or otherwise incapacitated from serving; and also in cases of vacancy by death, resignation, or otherwise, in the office of sheriff, the coroner shall discharge the duties of such office until a sheriff is appointed or elected and qualified.

As sheriff, duties, powers, and fees of.

SEC. 3. Whenever the coroner acts as sheriff, he shall possess the powers and perform all the duties of sheriff, and shall be liable on his official bond, in like manner as a sheriff would be, and shall be entitled to the same fees as are allowed by law to the sheriff for similar services.

Coroner's jury; when to be summoned.

SEC. 4. When a coroner has been informed that a person has committed suicide or has been killed, or has suddenly died; under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another, by criminal means, he shall go to the place where the body is and forthwith summon not less than nine, nor more than fifteen persons qualified by law to serve as jurors, to appear before him forthwith, at the place where the body of the deceased is, to inquire into the cause of his death.

Penalty, for juror failing to appear.

SEC. 5. Every person summoned as a juror, who shall fail to appear, without having a reasonable excuse, shall forfeit any sum not exceeding one hundred dollars —to be recorded by the coroner, in the name of the people of the Territory, before any justice of the peace, in the proper township; and when collected, to be paid over to the county treasurer, for the use of the county.

Jury, what to inquire into.

SEC. 6. When six or more of the jurors attend, they shall be sworn by the coroner to inquire who the person was, and when and where, and by what means he came to his death, and into the circumstances attending his death, and to render a true verdict thereon, according to the evidence afforded them or arising from the inspection of the body.

Witnesses, who to be, how summoned.

SEC. 7. The coroner may issue subpœnas for witnesses returnable forthwith or at such time and places a he may appoint, which may be served by any competent person. He must summon and examine as witnesses every person who, in his opinion or that of any of the jury, has any knowledge of the fact; and he may summon a surgeon or physician to inspect the body and give a professional opinion as to the cause of the death.

Witnesses, how punished for non attendance.

SEC. 8. A witness served with a subpœna may be compelled to attend and testify, or be punished by the coroner for disobedience, in like manner as upon a subpœna issued by a justice of the peace.

Verdict and certificate upon inquisition.

SEC. 9. After inspecting the body, and hearing the testimony, the jury shall render their verdict, and certify the same by an inquisition in writing, signed by them, and setting forth who the person killed is, and when, where and by what means he came to his death, and if he was killed or his death occasioned by the act of another, by criminal means, who is guilty thereof.

Testimony to be written and filed.

SEC. 10. The testimony of the witnesses examined before the coroner's jury shall be reduced to writing by the coroner, or under his direction, and shall be forthwith filed by him, with the inquisition, in the office of the clerk of the district court of the county.

When the inquisition to be delivered to a magistrate.

SEC. 11. If, however, the person charged with the commission of the offence be arrested before the inquisition can be filed, the coroner shall deliver the same, with the testimony taken, to the magistrate before whom such person may be brought, who shall return the same, with the depositions and statement taken before him, to the office of the clerk of the district court of the county.

When coroner to issue warrant of arrest.

SEC. 12. If the jury find that the person was killed by another, under circumstances not excusable or justifiable by law, so that his death was occasioned by the act of another by criminal means, and the party committing the act be ascertained by the inquisition, and be not in custody, the coroner shall issue a warrant, signed by him, with his name of office, into one or more counties, as may be necessary, for the arrest of the person charged.

Form of warrant of arrest.

SEC. 13. The coroner's warrant shall be substantially in the following form:

The People of the Territory of Idaho to any Sheriff, constable, marshal, or policeman, in this Territory, of the County of ————

AN inquisition having been this day found by a coroner's jury, before me, stating that A. B. has come to his death by the act of C. D., by criminal means (or as the case may be, as found by the inquisition), you are therefore commanded forthwith to arrest the above named C. D., and take him before the nearest or most accessible magistrate in this county.

Given under my hand, this ——— day of —————, A. D. 18——

E. F., Coroner of the county of ————

SEC. 14. The coroner's warrant may be served in any county, and the officer serving it shall proceed thereon in all respects, as upon a warrant of arrest on an information before a magistrate, except, that when served in another county, it need not be indorsed by a magistrate of that county. The warrant served as other warrants.

SEC. 15. The coroner must, within thirty days after an inquest upon a dead body, deliver to the county treasurer any money or property which may be found upon the body, unless claimed in the meantime by the legal representatives of the deceased. If he fail to do so, the treasurer may proceed against the coroner to recover the same, by a civil action, in the name of the county. Time to deliver property found, to treasurer

SEC. 16. Upon the delivery of money to the treasurer, he shall place it to the credit of the county. If it be other property, he shall, within thirty days, sell it at public auction, upon reasonable public notice, and shall, in like manner, place the proceeds to the credit of the county. Duties of treasurer.

SEC. 17. If the money in the treasury be demanded within six years by the legal representatives of the deceased, the treasurer shall pay it to them, after deducting the fees and expenses of the coroner, and of the county in relation to the matter; or the same may be so paid at any time thereafter, upon the orders of the Commissioner's of the county. When money to be paid to representatives.

SEC. 18. Before auditing and allowing the account of the coroner, the Board of Commissioners shall require of him a statement, in writing, of any money or other property found upon persons on whom inquests have been held by him, verified by his oath, to the effect that the statement is true, and that the money or property mentioned in it has been delivered to the legal representatives of the deceased, or to the county treasurer. Statement of coroner to commissioners.

SEC. 19. If the office of coroner be vacant or he be absent, or unable to attend, the duties of his office may be performed by any justice of the peace of the county, with the like authority, and subject to the same obligations and penalties as the coroner. When justice to act as coroner.

SEC. 20. The justices of the peace in their respective townships shall act as coroners, and discharge all the duties as coroner, when called upon or required so to do. Justices to act as coroners.

SEC. 21. A justice of the peace, acting as coroner, shall be entitled to the same fees, payable in the same manner. Same fees.

SEC. 22. When an inquest shall be held by the coroner, and no person shall offer to take charge of the body Burial of deceased by coroner.

of the deceased, it shall be his duty to cause said body to be decently interred; and in case there shall not be sufficient property belonging to the estate of the deceased to pay the necessary expenses of said burial, said expense shall be a legal charge upon his county; the coroner shall be entitled to receive the sum of ten dollars out of his county treasury for attending to the burial of such dead body.

Fees of coroner.

SEC. 23 All services in summoning a jury of inquest, five dollars; for swearing a jury, one dollar; for issuing a warrant of arrest, fifty cents; for issuing subpœnas, twenty-five cents; for each mile necessarily traveled in going to the place of the dead body, fifty cents; which fees in all inquests shall be paid out of the county treasury, as other demands; for all services rendered by them, when acting as sheriffs, the same fees as are allowed to sheriffs for similar services; or swearing each witness, twenty-five cents; for taking down the testimony of each witness, per folio, thirty cents.

Constables.

Constable to be elected, bond of.

SEC. 24. There shall be elected in the various precincts or townships in the counties in this Territory at the general election, when justices of the peace, and other officers are elected, a constable who shall hold his office for the term of two years, and who shall take the oath of office and give bond, to be approved by the Board of County Commissioners of his county, conditioned for the faithful performance of the duties of his office. The bond shall be in such penalty as the Board of County Commissioners may direct, and, after approval, shall be filed and recorded in the office of the county recorder.

Duties and powers of constables.

SEC. 25. The constable shall attend the courts of justices of the peace of his township, whenever required, and within his township shall execute all lawful orders made by them, and execute and return all writs and process directed to him by such justice or any lawful authority, and shall serve within his township and return all notices placed in his hands for service, relating to any suit or proceeding in any court of this Territory.

Law relating to sheriffs to govern.

SEC. 26. In regard to the execution, service and return of orders, writs, process and papers, where there are no positive provisions of law prescribing his duties, he shall be governed by the laws relating to sheriffs, so far as they are applicable.

Failing to return process.

SEC. 27. For failing or refusing to return, as required by law, any writ or process issued by a justice of the peace, or any paper connected with any suit or proceeding before such justice, he shall be liable to pay the party at whose instance the suit or process has issued, or for whom the paper is to be served, the sum of fifty dollars; to be recovered of him and his sureties by motion, before a justice of the peace of his township, five days notice of the motion having been given.

Neglect to levy; liability therefor.

SEC. 28. If any constable to whom any writ of execution shall have been delivered, shall neglect or refuse, after being required by the creditor, his agent or attorney, to levy upon or sell any property of the defendant, which is liable to be levied upon and sold, he and the sureties on his bond shall be liable to the creditor for the value of such property.

Failing to pay over money, liability therefor.

SEC. 29. If any constable shall neglect or refuse to pay over any money in his hands, which he has collected or received in his official capacity, when demanded by the person entitled thereto, the amount thereof, with thirty-five per cent. damages and interest at the rate of ten per cent. per month from the time of demand, may be recovered from such constable and his sureties, as provided in this act.

Liable on bond for all official acts.

SEC. 30. For any official act or any omission to perform any duty required of him by law, the constable shall be liable on his bond to any person injured.

Conservators of the peace.

SEC. 31. Constables shall be conservators of the peace within their respective townships.

Penalty for official misconduct.

SEC. 32. Any constable who shall be guilty of any manifest and wilful negligence, or shall, in the administration or under color of his office, be guilty of any oppression or wrongful act, shall, upon conviction, be fined in any sum not exceeding two thousand dollars.

Not to practice as an attorney.

SEC. 33. No constable shall be permitted to practice as an attorney or counsellor at law, before the court of any justice of the peace of his township. For violating the provisions of this section, he shall be deemed guilty of a misdemeanor.

Fees of constables.

SEC. 34. A constable may lawfully charge, demand and receive the following fees for services rendered in discharging the duties imposed on him by law: For serving summons in civil action, for each defendant, fifty cents; for summoning a jury before a justice of the peace, one dollar and fifty cents; for taking a bond required to be taken, one dollar; for summoning each witness, twenty-five cents; for serving an attachment against the property of a defendant, one dollar; for receiving and taking care of property on execution, attachment or order, his actual necessary disbursements, to be allowed by the justice who issued the process, upon satisfactory proof that such charges are correct, and the expenses necessarily incurred; for collecting all sums on execution, three per cent., to be charged against the defendant in execution. Constables shall receive the same mileage for each mile necessarily traveled, in going only, as sheriffs are authorized to receive in similar cases; for serving a warrant or order for delivery of personal property or making an arrest in civil cases, one dollar; for services and travel in criminal cases, the same fees as sheriffs receive for like services; for all other services, except attending court, the same fees as are allowed sheriffs for similar services.

APPROVED *January* 14, 1875.

AN ACT

CONCERNING COUNTY TREASURERS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Election of, and term of office.
2. Bond, conditions of, bondsmen, qualifications of.
3. Oath of office, how endorsed.
4. Vacancies, how filled, and term defined.
5. Official accounts, how kept.
6. To receive and disburse public moneys.
7. Shall give receipts for moneys in duplicate.
8. Books of office, shall be open for inspection.
9. Manner of redeeming warrants, duties thereon.
10. Warrants, when not redeemed, treasurer's duty.
11. Shall give notice to pay warrants, how and when given,
12. Redeemed warrants, how cancelled.
13. Warrants, preference by order of registration.
14. Warrants not receivable for taxes.
15. Redeemed warrants, when and where deposited.
16. Removal from office, when may be.
17. Shall deliver effects of office to successor
18. Settlements, how and when made.
19. Office hours, exempt days, etc.
20. Kinds of money received, how certified.
21. May appoint deputies, how and when.
22. Deputies shall give official bonds, etc.
23. Acts of deputies in name of principal.
24. Fees, percentage, and compensation of.

County treasurers, election and term of office.

SEC. 1. There shall be elected in each of the organized counties in this Territory at the general election for county officers a county treasurer, who shall hold his office for the term of two years, from the time of entering upon the duties of his office, and until his successor is chosen and qualified.

To give bond, qualifications of bondsmen.

SEC. 2. Each county treasurer, before entering upon the duties of his office, shall enter into bond, with two or more sufficient resident and house holders or free holders within the county or an adjoining county, sureties, to the acceptance of the Board of County Commissioners of the proper county, in a penalty of double the probable amount of money that may at any time come to his hands, as such treasurer, with condition for the paying over all moneys according to law, which shall come into his hands for Territorial, county or other purposes, and that he will faithfully and promptly discharge all the duties of his said office that are now or may hereafter be enjoined on him by law.

To take oath.

SEC. 3. He shall likewise take the oath prescribed by law, to be endorsed on his certificate of election, before entering on the duties his of office.

Vacancies, how filled.

SEC. 4. Whenever the office of county treasurer shall become vacant by death, removal out of the county, resignation, neglect to give bond, or from any other cause, the Board of Commissioners shall forthwith convene and appoint some suitable person to fill such vacancy; and the person so appointed shall give bond and take the oath, in the like manner as required by county treasurers, and shall hold his office until the expiration of the term for which his predecessor was elected or appointed, and until his successor is chosen and qualified.

To keep accounts.

SEC. 5. Each county treasurer shall keep his office at the seat of justice for his county, and shall keep a fair and accurate account of all money by him received, showing the amount thereof, the time when, from whom, and on what account received; also of all disbursements by him made, showing the amount thereof, the time when, to whom, and on what account paid; and he shall so arrange his books that the amount received and paid on account of separate and distinct funds, or specific appropriations shall be exhibited in separate and distinct accounts, as well as that the whole receipts and expenditures shall be shown by one general or cash account; but no money received for taxes, charged on the duplicate of the current year, shall be by the treasurer entered on his account with the county until he shall have made his annual settlement thereof with the county auditor.

To keep and disburse moneys.

SEC. 6. It shall be the duty of the county treasurer to receive all moneys due and accruing to the county, or which are required by law to be paid to him or into the county treasury, and to pay and disburse the same, on the warrant of the county auditor, founded on orders made by the Board of County Commissioners.

To give receipts.

SEC. 7. When any money shall be paid to the county treasurer, he shall give to persons paying the same two duplicate receipts therefor; one of which receipts the person shall forthwith deposit with the county auditor, who shall charge the treasurer therewith, and give the person paying the same a quietus.

Books, &c. to be open for inspection.

SEC. 8. The books, accounts and vouchers of the county treasurer shall at all times be subject to the inspection and examination of the County Commissioners, and it is hereby made their duty to make such examination and count the money on hand at least once each year.

To redeem warrants.

SEC. 9. The county treasurer, when an order drawn on him, as such treasurer, by the auditor of his county, is presented for payment, shall, if there be money in the treasury for that purpose, redeem the same, and shall write on the face of such order, "redeemed," the date of redemption, and shall sign his name thereto.

Duties as to warrants when no money in treasury.

SEC. 10. When an order or warrant shall be presented to the county treasurer for payment, and the same is not paid for want of funds, the treasurer shall indorse thereon, "not paid for want of funds," annexing the date of presentation and signing his name thereto; and from that time till redeemed, said order or warrant shall bear ten per cent. interest per annum.

To give notice of moneys in treasury.

SEC. 11. So soon as there shall be sufficient funds in the treasury of the county to redeem the orders or warrants drawing interest, the county treasurer shall give notice in some newspaper in his county, or, if no newspaper be printed in his county, then, in some newspaper published at the capital of the Territory, and by written or printed notices, posted upon the court house door, stating therein that he is ready to redeem said orders or warrants; and from the date of such notice, said orders or warrants shall cease to bear interest.

To cancel redeemed warrants.

SEC. 12. When the county treasurer shall redeem any order on which interest is due, he shall note on the order or warrant the amount of interest paid thereon, and shall enter on his account the amount of such interest distinct from the principal.

Warrants entitled to preference in order of registration

SEC. 13. Orders or warrants drawn on the county treasury and properly attested, shall be entitled to preference as to payment out of moneys in the treasury, properly applicable to such order, according to the priority of time in which the same may have been presented. The time of presenting such order shall be noted by the treasurer, and upon the receipt of moneys into the county treasury, not otherwise appropriated, it shall be the duty of the treasurer to set apart the same, or so much thereof as may be necessary, for the payment of such order or warrant. Should such order or warrant not be re-presented for payment within sixty days from the time of the notice required in the eleventh section of this act, the fund set aside for the payment of the same, shall be by the treasurer applied to the redemption of unpaid warrants next in order of registry: *provided*, that the Board of County Commissioners shall, on the application and presentation of warrants properly indorsed which shall once have been advertised, pass an order directing the county to redeem and cancel such warrants out of any money in the treasury, belonging to the fund on which the warrant is drawn, or that which shall next thereafter come to his hands belonging to such fund.

Warrants not receivable for taxes.

SEC. 14. No order or warrant drawn on the county treasurer, and payable out of the county revenue, shall be received in payment of county tax, or dues except from the person in whose favor it was drawn, but shall be subject to redemption only in the order in which it stands registered or noted in the treasurer's book.

Treasurer to deposit redeemed warrants with auditor.

SEC. 15. The county treasurer shall, at such time or times as shall be designated and fixed by the Board of County Commissioners deposit with the county auditor all orders and warrants by him redeemed, and take the auditor's receipt therefor.

When treasurers may be removed.

SEC. 16. Whenever suit shall have been commenced against any delinquent county treasurer, the Board of County Commissioners may, in their discretion, remove such treasurer from office, and appoint some person to fill the vacancy thereby created, as hereinbefore directed.

To deliver effects of office to successor.

SEC. 17. Each county treasurer, on going out of office, shall deliver to his successor in office, all the public money, books, accounts, papers, and documents, in his possession; and in case of the death of any county treasurer, his legal representatives shall in like manner, deliver up all such moneys, books, accounts, papers, and documents, as shall come into their possession; *provided*, however, no percentage shall be allowed to the treasurer on any money by him received from his predecessor in office, or from legal representatives of such predecessor.

Settlements

SEC. 18. Every county treasurer shall make a full settlement of all his accounts with the county auditor, annually, at such time as may be designated by the Board of County Commissioners, in the presence of the Board of County Commissioners, who shall have a supervisory control of such settlement, said settlement to be governed in the manner prescribed by law, and said treasurer shall be credited with all sums paid for printing and publishing notices required to be given by him in the course of his official duties, and with all sums paid by him for blank books, stationery, and office furniture, to be paid on the order of the county auditor.

Office hours

SEC. 19. The treasurer shall keep his office open for the transaction of business, from ten o'clock A. M. until four o'clock P. M. of every day in the year, except Sundays, Christmas day, first day of New Year, Twenty-second of February, and the Fourth day of July.

To take and file certain oaths as to kind of money received.

SEC. 20. It shall be the duty of each collector or county treasurer, and they are hereby required to make oath to the Territorial treasurer when making their annual settlement, as required by law, that the money paid over by them into the Territorial treasury at such settlement, is of the same denomination as that received by them in the discharge of their official duties, and that in no case where gold dust or coin has been received by them for taxes, or otherwise, has the money thus received, been converted into or used for the purchase of county or Territorial bonds or warrants; *provided*, that it shall be the duty of collectors of taxes to furnish to the parties paying the same, in every case, a receipt specifying the kind of money in which payments have been made, whether gold and silver, or Territorial or county script, or warrants, and to file such receipts in duplicate, in the office of the recorder of the county, for three months after the first of January in each fiscal year, after which time they shall be filed in the office of the Territorial controller.

May appoint deputies, etc.

SEC. 21. The county treasurer of each of the several counties of this Territory may appoint one or more deputies, who shall have the same power in all respects as their principal. The appointment shall be in writing, signed by said treasurer, and shall be filed in the office of the recorder of his county. He may revoke the appointment of any deputy at will, by writing filed in the same office. Each deputy, before entering upon his duties, shall take the oath of office; which shall be indorsed, on his appointment.

Deputies to give bond.

SEC. 22. The said treasurer shall take from each of his deputies a bond with sureties, for the faithful performance of his duties; which bond shall immure as well to the benefit of the sureties of the treasurer. But the county treasurer and his sureties on his official bond shall be liable for all the official acts of his deputy or deputies.

Acts of deputies. SEC. 23. All official acts of any deputy county treasurer shall be in the name of the principal.

Compensation. SEC. 24. The county treasurer shall be allowed, on all moneys received and disbursed by him, three per cent. on the first thirty thousand dollars; two per cent. on all over thirty thousand dollars, and under one hundred thousand dollars, and one per cent. on all over one hundred thousand dollars; *provided*, nothing in this act shall be construed so as to allow any officer a percentage on both receiving and disbursing. *Provided further*, that in all counties where the compensation of the county treasurer is fixed by special laws, said counties shall be excepted and exempted from the provisions of this section.

APPROVED *January* 12, 1875.

AN ACT

CONCERNING DISTRICT ATTORNEYS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. A district attorney for each district; term of office.
2. Bond, amount of, etc.
3. Duties, deputy.
4. Duties, opinion may be required.
5. Salary, how drawn.
6. Fees for services.
7. Repealing clause.

A district attorney for each district; term of office.

SEC. 1. There shall be a district attorney for each of the district attorney districts, as established by law; they shall hold their offices for the term of two years and until their successors are elected, or appointed as required by law.

Bond, amount of, etc.

SEC. 2. They shall each, before entering upon the duties of their said offices, execute and file in the office of the clerk of the district court of the county where such district attorney resides, a bond to be approved by the district judge of the district, or in case of a vacancy in that office, by one of the justices of the supreme court, with one or more sureties, in the sum of two thousand dollars, conditioned that they will well and truly pay over all moneys collected by them as district attorneys, and for the faithful performance of their duties.

Duties.

SEC. 3. They shall be public prosecutors in their respective districts, and shall sign all bills of indictments that may be found by the grand jury, and shall prosecute, on behalf of the people, all public prosecutions wherein the people of this Territory are a party; and they shall each have power to appoint a deputy at any time, when the business of the respective offices shall seem to require it.

Duties; opinion may be required.

SEC. 4. They shall, when requested by the foreman or by any three members of the grand jury, give their opinion in writing, on any matter of law pertaining to their duties as grand jurors; and shall also, when requested by any county officer within their district, or by any Territorial officer, give their opinion in writing to said officer or officers, or on any matter of law pertaining to their duties as such officers, without fee or reward; they shall also prosecute, in behalf of the people, all forfeited recognizances when so ordered by the Board of County Commissioners, and shall receive, to their own use, ten per cent. of all moneys thus collected; also all forfeited bonds, recognizances and undertakings, wherein the people are a party, or necessarily involved in the action.

Salary, how drawn.

SEC. 5. Each of the said district attorneys shall receive an annual salary of fifteen hundred dollars, payable out of the Territorial treasury, quarter yearly, out of any moneys not otherwise appropriated, upon an order drawn on the Territorial treasurer, by the district judge of his district for that purpose, provided the said district attorney shall be and reside in his said district, or his office shall be deemed vacant.

Fees for services.

SEC. 6. They shall also be entitled to receive the following fees, to-wit: For every conviction of felony on plea of not guilty, where the sentence of the court is death, one hundred dollars; for every conviction of felony on plea of not guilty, where the sentence of the court is *otherwise than* death, fifty dollars; for every conviction of felony on plea of guilty, twenty-five dollars; for every trial of felony on plea of not guilty, resulting in acquittal, twenty-five dollars; for every examination for felony before a committing magistrate, fifteen dollars; for every conviction of misdemeanor, on plea of not guilty, twenty dollars; for every conviction of misdemeanor, on plea of guilty, ten dollars. In all cases of felonies the above fees shall be paid out of the treasury of the county where the trial, examination or conviction shall take place. And in all cases of misdemeanor the above fees shall be taxed as costs and to be collected from the persons convicted, but in no case to be paid out of the county treasury. *Provided*, that in no case shall any fees be taxed, collected or paid, where the district attorney or his deputy shall not be personally present at such examination, trial, or conviction; and *provided further*, that if any attorney other than the district attorney, appears on the prosecution he shall be entitled to the same fees as the district attorney.

Repealing clause

SEC. 7. That all laws, or parts of laws in conflict with the provisions of this act, be and the same are hereby repealed.

APPOVED *January* 14, 1875.

AN ACT

RELATIVE TO ATTORNEYS AND COUNSELORS AT LAW.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Who are attorneys.
2. Who may become attorneys.
3. Applicant must produce a certificate and be examined.
4. The admission.
5. The district court may admit.
6. Library fund; amount to be paid to, by applicant.
7. Attorneys of other States, how admitted.
8. Roll of attorneys.
9. Penalty for practicing without admission.
10. Authority of attorney.
11. Change of attorney; how made.
12. Written notice of change to be given.
13. Removal or death of attorney; appointment of another may be required.
14. When attorney may be removed or suspended by the court.
15. The record of conviction to be transmitted to supreme court.
16. Proceedings to remove; how taken.
17. Accusation to be in writing.
18. Accusation; what to state, to be verified.
19. Order to appear and answer, time of service.
20. Must appear and answer.
21. Answer, what to contain.
22. Objection to the sufficiency, how made.
23. Objection not sustained, must answer forthwith.
24. How to proceed.
25. Reference.
26. Judgment upon conviction.
27. Repealing all prior acts.

Who are attorneys.

SECTION 1. All persons admitted to practice in any of the courts of this Territory, shall be known as attorneys and counselors at law.

Who may become attorneys.

SEC. 2. Any male citizens of the United States of the age of twenty-one years, of good moral character, and who shall possess the necessary qualifications of learning and ability, shall be entitled to admission as attorney and counselor in all the courts of this Territory.

Applicant must produce a certificate and be examined.

SEC. 3. Every applicant for admission as attorneys and counselors in the supreme court shall produce satisfactory testimonials of good moral character, shall produce a certificate or certificates from one or more respectable attorneys or counselors at law in practice, to the effect, that, the person applying for admission, was a student of law, with him, or them, or under his or their care and direction, stating the period of time which shall amount in the aggregate to the full term of two years, and undergo a strict examination, in open court, as to his qualifications by a committee of three learned attorneys and counselors appointed by the court for that purpose, and by one or more of the judges of the supreme court of this Territory, and such examination may be conducted orally or in writing, as the committee shall decide.

The admission.

SEC. 4. If upon such examination, he be found duly qualified, the court shall admit him as attorney and counselor in all the courts of this Territory, and shall direct an order to be entered to that effect upon its record, and that a certificate of such record be given to him by the clerk of the court, which certificate shall be his license.

The district court may admit.

SEC. 5. The district court of this Territory is authorized to admit, as attorney and counselor, any male citizen of the age of twenty-one years, and of good moral character, who possesses the requisite qualifications, on similar testimonials and like examinations as are required by the preceding sections for admission by the supreme court, and may direct its clerk to give a certificate of such admission, which certificate shall be his license to practice in such court.

Library fund; amount to be paid to, by applicant.

SEC. 6. Every person, before receiving license to practice law, shall take the oath prescribed by law, and pay over to the Territorial treasurer the sum of twenty-five dollars for the use of the Territorial library fund, and the clerk of the court shall require of the person so admitted the receipt of the said treasurer, before issuing such license, and in no case shall the oath be administered and the license issued until such receipt is produced and filed in the office of the clerk.

Attorneys of other States.

SEC. 7. The examination may be dispensed with in the case of a person who has been admitted attorney and counselor, in the highest courts of a sister State or Territory; his affidavit of such admission showing the county, State or Territory, the name of the court, and the time when such admission was obtained, or his license showing the same, shall be deemed sufficient to entitle him to admission.

Roll of attorneys. Sec. 8. Each clerk shall keep a roll of attorneys and counselors of the court of which he is clerk, which shall be a record of the court.

Penalty for practicing without admission. Sec. 9. If any person shall practice law in any court, except a justice's, or recorder's, or police courts, without having received a license as attorney and counselor, he shall be deemed guilty of a contempt of court, and punished as in other cases of contempt.

Authority of attorney. Sec. 10. An attorney and counselor shall have authority;

First—To bind his client in any of the steps of an action or proceeding, by his agreement filed with the clerk, or entered upon the minutes of the court.

Second—To receive money claimed by his client in an action or proceeding, during the pendency thereof, or within one year after judgment and upon the payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction in the judgment.

Change of attorney; how made. Sec. 11. The attorney in an action, or special proceeding, may be changed at any time before judgment or final determination, as follows:

First—Upon his own consent, filed with the clerk, or entered upon the minutes.

Second—Upon the order of the court or judge thereof, on the application of the client.

Written notice of change to be given. Sec. 12. When an attorney is changed, as provided in the last section, written notice of the change and of the substitution of a new attorney, or of the appearance of the party in person, shall be given to the adverse party; until then he shall be bound to recognize the former attorney.

Removal or death of attorney, appointment of another may be required. Sec. 13. When an attorney dies, or is removed, or suspended, or ceases to act as such, a party to an action for whom he was acting as attorney, shall, before any further proceeding be had against him, be required by the adverse party by written notice, to appoint another attorney, or to appear in person.

When attorney may be removed or suspended by the court. Sec. 14. An attorney and counselor may be removed or suspended by the supreme court, or by any district court in the Territory, for either of the following causes, arising after his admission to practice:

First—Upon his being convicted of felony or misde meanor, involving moral turpitude, in either of which cases the record of his conviction shall be conclusive evidence.

Second—For misconduct in office, or for good cause shown.

The record of conviction to be transmitted to supreme court. SEC. 15. In case of the conviction of an attorney or counselor of felony or misdemeanor, involving moral turpitude, the clerk of the court in which the conviction was had, shall, within thirty days thereafter, transmit to the supreme court a certified copy of the record of conviction.

Proceedings to remove, how taken. SEC. 16. The proceeding to remove or suspend an attorney and counselor, under the first subdivision of section fourteenth, shall be taken by the court on the receipt of the certified copy of the record of conviction; the proceedings under the second subdivision of section fourteen may be taken by the court for matters within its knowledge, or may be taken upon the information of another.

Accusation to be in writing. SEC. 17. If the proceedings be upon the information of another, the accusation shall be in writing, and shall be presented to the court.

Accusation, what to state, to be verified. SEC. 18. The accusation shall state the matters charged, and shall be verified by the oath of the person making it, or some other person, to the effect that the charges therein contained are true.

Order to appear and answer, time of service. SEC. 19. After receiving the accusation, the court shall, if in its opinion the case require it, make an order requiring the accused to appear and answer to the accusation, at a specified time, in the same or subsequent term, and shall cause a copy of the order, and of the accusation, to be served upon the accused, within a prescribed time before the day appointed in the order; *provided*, such time shall not be less than five days.

Must appear and answer. SEC. 20. The accused must appear at the time appointed in the order, and answer the accusation, unless for sufficient cause the court assign another day for that purpose; if he do not appear, the court may proceed and determine the accusation in his absence.

Answer, what to contain. SEC. 21. The accused may answer to the accusation, either by objecting to the sufficiency, or by denying its truth.

Objection to the sufficiency, how made. SEC. 22. If he object to the sufficiency of the accusation, the objection shall be in writing, but need not be in any specific form, it being sufficient if it present intelligibly, the grounds of objection; if he deny the truth of the accusation, the denial may be oral, and without oath, and shall be entered upon the minutes.

Objection not sustained, must answer forthwith.

SEC. 23. If an objection to the sufficiency of the accusation be not sustained, the accused shall answer forthwith.

How to proceed.

SEC 24. If the accused plead guilty or refuse to answer the accusation, the court shall proceed to judgment of removal, or suspension; if he deny the matter charged the court shall immediately, or at such time as it may appoint, proceed to try the accusation.

Reference.

SEC. 25. The court may, in its discretion, order a reference to a committee to take depositions in the matter, and to report to the court, before proceeding to try the accusation.

Judgment upon conviction.

SEC. 26. Upon conviction, in cases arising under the first subdivision of section fourteenth, the judgment of the court shall be, that the name of the party be stricken from the roll of attorneys, and counselors of the court, and that he be precluded from practicing as such attorney and counselor in all courts of this Territory; and upon conviction in cases under the second subdivision of section fourteen, the judgment of the court may be, according to the gravity of the offence charged, deprivation of the right of practice as attorneys and counselors in the courts of this Territory, permanently, or for a limited period.

Repealing all prior acts.

SEC. 27. All acts and part of acts amendatory or supplementary passed at the first, second, third, fourth, fifth, sixth and seventh sessions of the Legislative Assembly of Idaho, and in conflict with the provisions of this act, are hereby repealed.

APPROVED *January* 12, 1875.

AN ACT

DEFINING THE TIME OF COMMENCING CIVIL ACTIONS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Commencement of civil actions.
2. When the cause of action has already accrued.
3. Suits by the people for real property.
4. When actions may be maintained.
5. Actions on title to real property or to rents or profit.
6. Entry upon real estate.
7. Presumption in favor of persons establishing a legal title.
8. Presumption of adverse holding, exceptions.
9. Adverse possession by claim or title under written instrument.
10. Adverse possession by continued occupation.
11. Adverse possession of claim or title not under written instrument.
12. Possession of tenant the possession of landlord.
13. Descent cast, not to impair right.
14. Persons under legal disability excepted
15. Time during which said disability shall continue.
16. Periods of limitations in actions other than for the recovery of real property.
17. Action to recover balance of mutual account.
18. Action for relief not provided for.
19. Limitations of act to apply to actions on behalf of Territory.
20. Action when deemed commenced.
21. Party out of Territory.
22. Disabilities of plaintiff.
23. Death of party entitled to sue before time of limitation expires.
24. Aliens subject of hostile country.
25. Time of limitation where judgment reversed.
26. Commencement of action stayed by injunction.
27. Disability must exist, etc.
28. Two or more disabilities.
29. Not to apply to actions for penalties against officers of corporations, etc.
30. Acknowledgment or new promise must be in writing to be valid.
31. When right of action has accrued, exceptions.
32. Instruments executed out of this Territory.
33. Limitation laws of other States and Territories.
34. Contracts made out of this Territory.

Commencement of civil actions

SEC. 1. Civil actions can only be commenced within the periods prescribed in this act, after the cause of action shall have accrued, except where a limitation is prescribed by statute.

Where the cause of action has already accrued.

SEC. 2. When the cause of action has already accrued, the party entitled and those claiming under him, shall have, after the passage of this act, the whole period herein prescribed in which to commence an action.

Suits by the people for real property.

SEC. 3. The people of this Territory will not sue any person for, or in respect to any real property, or the issues or profits thereof by reason of the rights or title of the people to the same, unless—

First—Such right or title shall have accrued within ten years before any action or other proceeding for the same shall have commenced; or, unless,

Second—The people, or those from whom they claim shall have received the rents and profits of such real property, or of some part thereof, within the space of ten years.

When actions may be maintained.

SEC. 4. No action for the recovery of mining claims, or for the recovery of the possession thereof, shall be maintained, unless it appear that the plaintiff, or his assigns, was seized or possessed of such mining claim in question, within one year before the commencement of such action; *provided*, that this section shall not apply to actions for the possession of or affecting the title to quartz mining claims; and such actions for the possession of or affecting quartz claims may be brought within the time prescribed in actions for the possession of or affecting the title to real estate as prescribed in section five of this act.

Action on title to real property or to rents or profit.

SEC. 5. No cause of action, or defense to an action, founded upon title to real property, or to rents or to services out of the same, shall be effectual, unless it appear that the person prosecuting the action, or making the defense, or under whose title the action is prosecuted, or the defense is made, or the ancestor, predecessor, or grantor of such person was seized or possessed of the premises in question, within five years before the commencement of the act, in respect to which such action is prosecuted, or defense made.

Entry upon real estate.

SEC. 6. Any peaceable entry upon real estate shall be deemed sufficient and valid as a claim, unless an action be commenced by the plaintiff for possession, within one year after the making of such entry, or within five years from the time when the right to bring such action accrued.

Presumption in favor of persons establishing a legal title.

SEC. 7. In every action for the recovery of real property, or the possession thereof, the person establishing a legal title of the premises shall be presumed to have been possessed thereof within the time prescribed by law; and the occupation of the premises by any other person shall be deemed to have been under and in subordination to the legal title, unless it appear that such premises have been held and possessed adversely to such legal title for five years before the commencement of such action.

Presumption of adverse holding.

SEC. 8. Whenever it shall appear that the occupant, or those under whom he claims, entered into the possession of premises under claim of title, exclusive of any other right, founding such claim upon a written instrument as being a conveyance of the premises in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the premises included in such instrument, decree, or judgment, or of some part of such premises, under such claim for five years, the premises so included shall be deemed to have been held adversely, except that when the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.

Adverse possession by claim of title under written instrument.

SEC. 9. For the purpose of constituting an adverse possession by any person claiming a title, founded upon a written instrument, or judgment or decree, land shall be deemed to have been possessed and occupied in the following cases:

First—When it has been usually cultivated and improved.

Second—When it has been protected by a substantial enclosure.

Third—When (although not enclosed) it has been used for the supply of fuel, or of fencing timber for the purposes of husbandry, or for the use of pasturage, or for the ordinary uses of the occupant.

Fourth—Where a known lot, or single farm, not exceeding one hundred and sixty acres in extent, has been partly improved, the portion of such farm or lot that may have been left not cleared, or not inclosed, according to the usual course or custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

Adverse possession by continued occupation.

SEC. 10. When it shall appear that there has been an actual continued occupation of premises, under a claim of title, exclusive of any other right, but not founded upon any written instrument, or judgment or decree, the premises so actually occupied and no other, shall be deemed to have been held adversely.

Adverse possession of claim of title not under written instrument.

SEC. 11. For the purpose of constituting an adverse possession by a person claiming title, not founded upon a written instrument, judgment or decree, land shall be deemed to have been possessed and occupied in the following cases only:

First—When it has been inclosed by a good and substantial inclosure.

Second—When it has been usually cultivated and improved.

Possession of tenant the possession of landlord.

SEC. 12. Whenever the relation of landlord and tenant shall have existed between any persons, the possession of the tenant shall be deemed the possession of the landlord, until the expiration of five years from the expiration of the tenancy, or when there has been no written lease, until the expiration of five years from the last payment of rent, notwithstanding that such tenant may have acquired another title or may have claimed to hold adversely to his landlord; but such presumptions shall not be made after the periods herein limited.

Descent cast not to impair right.

SEC. 13. The right of a person to the possession of any real property, shall not be impaired or effected by a descent being cast in consequence of the death of a person in possession of such property.

Persons under legal disability excepted

SEC. 14. If a person entitled to commence any action for the recovery of real property, or to make an entry or defense, founded on the title to real property, or to rents, or service out of the same, be, at the time such title shall first descend or accrue, either—

First—Within the age of twenty-one years; or,

Second—Insane; or,

Third—Imprisoned on a criminal charge, or in execution upon conviction of a criminal offense for a term less than life; or,

Fourth—A married woman.

Time during which said disability shall continue.

SEC. 15. The time during which such disability shall continue, shall not be deemed any portion of the time in this act limited for the commencement of such action, or the making of such entry or defense, if made within the period of five years after such disability shall cease, or, after the death of the person entitled, who shall die under such disability; but such action shall not be commenced, or entry or defense made, after that period.

Limitation; for recovery of real property.

SEC. 16. Actions, other than those for the recovery of real property, can only be commenced as follows: Within five years, an action upon a judgment or decree of any court of the United States, or of any State or

Territory within the United States. Within four years, an action upon any contract, obligation, or liability, founded upon an instrument of writing except those mentioned in the preceding section. Within three years—

First—An action upon a liability created by a statute, other than a penalty or forfeiture.

Second—An act for tresspass upon real property.

Third—An action for taking, detaining or injuring any goods or chattels, including actions for the specific recovery of personal property.

Fourth—An action for relief on the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the frauds. Within two years—

First—An action upon a contract, obligation or liability, not founded upon an instrument of writing.

Second—An action against a sheriff, coroner, or constable, upon the liability incurred by the doing of an act in his official capacity, and in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution.

Third—An action upon a statute for a penalty or forfeiture, when the action is given to an individual, or to an individual and the Territory, except where the statute imposing it prescribes a different limitation.

Fourth—An action for libel, slander, assault, battery, or false imprisonment.

Fifth—An action upon a statute, forfeiture or penalty to the people of this Territory.

Sixth—An action against a sheriff, or other officer, for the escape of a prisoner arrested or imprisoned on civil process.

Seventh—An action on an open account for goods, wares, merchandise sold and delivered.

Eighth—An action for any article charged in a store account.

Action to recover balance of mutual account.

Sec. 17. In an action brought to recover a balance due upon a mutual, open and current account, when there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side.

Action for relief not provided for.

Sec. 18. An action for relief, not hereinbefore provided for, must be commenced within four years after the cause of action shall have accrued.

Limitations of act to apply to Territory.

Sec. 19. The limitations prescribed in this act shall apply to actions brought in the name of the Territory, or for the benefit of the Territory, in the same manner as to actions brought by private parties.

Action when deemed commenced.

SEC. 20. An action shall be deemed to have commenced, within the meaning of this act, when the complaint has been filed in the proper court, and summons issued and placed in the hands of the sheriff of the county, or other person authorized to serve the same.

Party out of Territory.

SEC. 21. If, when the cause of action shall accrue against a person, he is out of the Territory, the action may be commenced within the term herein limited, after his return to the Territory; and if, after the cause of action shall have accrued, he depart from the Territory, the time of his absence shall not be part of the time limited for the commencement of the action.

Disabilities of plaintiff.

SEC. 22. If a person entitled to bring an action, other than for recovery of real property, except for a penalty of forfeiture, or against a sheriff or other officer for an escape, be, at the time the cause of action accrued, either—

First—Within the age of twenty-one years; or,

Second—Insane; or,

Third—Imprisoned on a criminal charge, or in execution under a sentence of a criminal court for a term less than his natural life; or,

Fourth—A married woman; the time of such disability shall not be a part of the time limited for the commencement of such action.

Death of party entitled to sue before time of limitation expires.

SEC. 23. If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives, after the expiration of that time and within one year from his death. If a person against whom an action may be brought, die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced against his executors or administrators, after the expiration of that time and within one year after the issuing of letters testamentary or of administration.

Alien, subject of hostile country

SEC. 24. When a person shall be an alien, subject or citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the period limited for the commencement of the action; *provided*, *however*, that nothing in this section shall be so construed as to consider any citizen or person of any State engaged in rebellion against the United States government as an alien.

Time of limitation where judgment reversed.

SEC. 25. If an action shall be commenced within the time prescribed thereof, and a judgment therein for the plaintiff be reserved on appeal of the plaintiff, or if he die and the cause of action survive, his heirs or representatives may commence a new action within one year after the reversal.

Commencement of action stayed by injunction.

SEC. 26. When the commencement of an action shall be stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition shall not be part of the time limited for the commencement of the action.

Disability must exist, etc.

SEC. 27. No person shall avail himself of a disability unless it existed when his right of action accrued.

Two or more disabilities.

SEC. 28. When two or more disabilities co-exist at the time the right of action accrues, the limitation shall not attach until they are all removed.

Not to apply to actions for penalties against officers of corporations, etc.

SEC. 29. The preceding sections of this act shall not affect actions against directors or stockholders of a corporation to recover a penalty of forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within three years after the discovery by the aggrieved party, of the facts upon which the penalty or forfeiture attached or the liability was created.

Acknowledgment or new promise must be in writing to be valid.

SEC. 30. No acknowledgment of promise shall be sufficent of a new continuing contract, whereby to take the case out of the operation of this statute, unless the same be contained in some writing signed by the party to be charged thereby.

When right of action has accrued

SEC. 31. When the right of action has accrued, or shall accrue in any other Territory from which Idaho Territory is in part formed, in the classes of cases mentioned in section sixteen of this act, the time of commencing actions shall be limited in the respective classes of cases as prescribed in said section, but the period of limitation in such cases shall commence at the time of the accruing of such right of action in any of the Territories from which Idaho Territory is in part formed, and shall run continuously, excepting the time the party may have been absent from any of the above Territories. A right of action shall be deemed to have accrued on a judgment, at the time of its rendition.

Instruments executed out of this Territory.

SEC. 32. An action upon any contract, obligation, or liability, for the payment of money, founded upon an instrument of writing executed out of this Territory, or any other Territory from which this Territory is in part formed, can only be commenced as follows:

First—Within one year, when more than two or less than five years have elapsed since the cause of action accrued.

Limitation laws of other States and Territories. SEC. 33. When the cause of action has arisen in any State or other Territory of the United States, or in a foreign country, and by the laws thereof an action cannot be maintained against a person by reason of the lapse of time, no action thereon shall be maintained against him in this Territory.

Contracts made out of this Territory. SEC. 34. An action upon any judgment, contract, obligation or liability, for the payment of money or damages, obtained, executed or made out of this Territory; or any other Territory, from which this Territory is in part formed, shall only be commenced within three years after the party making such liability shall be a resident of Idaho Territory.

APPROVED *January* 14, 1875.

AN ACT

CONCERNING CONVEYANCES.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Conveyance by deed.
2. Joint deed of husband and wife; proviso.
3. When and how married woman may alone execute deed.
4. Conveyance to be acknowledged.
5. Who may take acknowledgments.
6. Acknowledgment endorsed on the conveyance.
7. Identity of party to be known or proven.
8. Certificate, what to contain.
9 Form of acknowledgment, when known.
10. Form, when proved.
11. Proof of execution, by whom.
12. Witness to be personally known, or proved.
13. No certificate granted unless the identity is established.
14. Certificate of proof of execution, what to contain.
15. Subscribing witnesses must be dead, or cannot be had.
16. Conditions precedent to granting certificate of proof.
17. Subpœna for witness to prove execution.
18. Compelling attendance of witnesses.
19. Proof of execution, may be recorded.
20. Conveyance by married woman.
21. Who may take acknowledgment of married woman.
22. Acknowledgment by married woman.
23. Certificate of acknowledgment of married woman.
24. Conveyance must be recorded.
25. Record imparts notice.
26. Unrecorded conveyances void as to subsequent purchasers.
27. Powers of attorney, etc. to be acknowledged and recorded.
28. Revocation to be recorded.
29. Instruments, acknowledged and recorded to be read in evidence.
30. When lost, transcript of record may be used in evidence.
31. Not conclusive, may be rebutted.
32. When proof taken upon oath of incompetent witness.
33. Estate acquired subsequent to conveyance thereof, inures to benefit of grantee.
34. Person out of possession, may convey his interest.

SECTION 35. Real estate defined.
36. Convey and defined.
37. Personal entry of satisfaction of mortgage.
38. Entry of satisfaction upon certificate presented.
39. Certificate of satisfaction to be recorded.
40 Mortgage liable for refusing to give certificate of discharge.
41. Conveyances heretofore made.
42. Conveyances not affected by this act.
43. Tenancy in common.
44. Heirs, etc. not necessary; all the estate passes unless expressly excepted.
45. In remainder estate, "heirs" or "issue" construed.
46. Future estate, how defeated
47. Contingent remainder, issue born after the same as in life-time of father.
48. No attornment necessary.
49 Attornment to stranger void.
50. Liability of heirs on covenants of title.
51. "Grant," "bargain" and "sell" construed.
52 Instruments heretofore recorded to impart notice.

Conveyance by deed.

SEC. 1. Conveyances of land, or of any estate, or interest therein, may be made by deed signed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved and recorded, as hereinafter directed.

Joint deed of husband and wife.

SEC. 2. A husband and wife may, by their joint deed, convey the real estate of the wife in like manner as she might do by her separate deed if she were unmarried, *provided*, that a married woman of legal age, shall have power to convey and transfer lands or any estate or interest, therein vested in or held by her in her own right, as fully and perfectly as she might or could do if single or unmarried, *provided*, *further*, that the husband of such married woman be not, and for one year next preceding the execution of the instrument of conveyance by the wife, has not been *bona fide* residing in this Territory.

When and how married woman may alone execute deed.

SEC. 3. The execution of an instrument of conveyance by a married woman, independent of her husband, as provided in the preceding section, shall be acknowledged before the district judge of the county in which the lands described in the conveyance are located; and the judge taking such acknowledgement, shall, before he certify the same, be satisfied by the oaths of at least two credible, disinterested citizens of this Territory, that the husband of such married woman does not, and for one year next preceding the day of acknowledgement has not resided in this Territory, which fact, and the name of the witnesses by whom the same was proved, shall be recited in the certificate of acknowledgment.

SEC. 4. Every conveyance in writing whereby any real estate is conveyed or may be effected, shall be acknowledged or proved and certified in the manner hereinafter provided.

Conveyance to be acknowledged.

SEC. 5. The proof or acknowledgement of every conveyance affecting any real estate, shall be taken by some one of the following officers:

Who may take acknowledgments.

First—If acknowledged or proved within this Territory, by some judge or clerk of a court, having a seal or some notary public or justice of the peace of the proper county.

Second—If acknowleged or proved without this Territory, and within the United States, by some judge or clerk of any court of the United States, or of any State or Territory, having a seal, or by any commissioner appointed by the Governor of this Territory for that purpose.

Third—If acknowledged or proved without the United States by some judge or clerk of any court of any State, Kingdom or Empire, having a seal, or by any notary public therein, or by any minister, commissioner, or consul of the United States appointed to reside therein.

SEC. 6. Every officer that shall take the proof or acknowledgement of any conveyance effecting any real estate, shall grant a certificate thereof, and cause such certificate to be endorsed or annexed to such conveyance; such certificate shall be, when granted by any judge or clerk, under the hand of such judge or clerk, and the seal of the court; when granted by any officer who has a seal of office, under the hand and official seal of such officer.

Acknowledgment endorsed on the conveyance.

SEC. 7. No acknowledgment of any conveyance whereby any real estate is conveyed, or may be effected shall be taken unles the person offering to make such acknowledgment shall be personally known to the officer taking the same, to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by the oath or affirmation of a credible witness.

Identity of party to be known or proven.

SEC. 8. The certificate of acknowledgment shall state the fact of acknowledgment, and that the person making the same was personally known to the officer granting the certificate, to be the person whose name is subscribed to the conveyance as a party thereto, or was proved to be such by the oath of affirmation of a credible witness whose name shall be inserted in the certificate.

Certificate, what to contain.

Form of acknowledgment, when known.

SEC. 9. Such certificate shall be substantially in the following form to wit:

TERRITORY OF IDAHO, } ss
County of———— }

On this———day of———A. D. 18———personally appeared before me, a notary public, (judge or other officer as the case may be) in and for the said county, A. B., personally known to me to be the person described in, and who executed the foregoing instrument, and who acknowledged to me that he executed the same freely and voluntarilly, and for the use and purposes therein mentioned.

Form, when proved.

SEC. 10. When the grantor is unknown to the judge or other officer, taking the acknowledgement, the certificate may be in the following form, to wit:

TERRITORY OF IDAHO } ss
County of———— }

On this ———day of ———A. D. 18——, personally appeared before me, a notary public (judge or other officer), in and for said county, A. B., satisfactorily proved to me to be the person described in, and who executed the within conveyance, by the oath of C. D., a competent and credible witness for that purpose, by me duly sworn, and he, the said A. B., acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

Proof of execution, by whom.

SEC. 11. The proof of the execution of any conveyance whereby any real estate is conveyed or may be effected, shall be:

First—By the testimony of a subscribing witness, or,

Second—When all the subscribing witnesses are dead or cannot be had, by evidence of the hand writing of the party, and of at least one subscribing witness.

Witness to be personally know or proved.

SEC. 12. No proof of a subscribing witness shall be taken unless such witness shall be personally known to the officer taking the proof, to be the person whose name is subscribed to the conveyance as a witness thereto, or shall be proved to be such by the oath or affirmation of a credible person.

No certificate granted, unless identity established.

SEC. 13. No certificate of such proof shall be granted unless such subscribing witness shall prove that the person whose name is subscribed thereto as a party, is the person described in, and who executed the same, that such person executed the conveyance, and such witness subscribed his name thereto as a witness thereof.

Certificate of proof of execution, what to contain.

SEC. 14. The certificate of such proof shall set forth the following matters:

First—The fact that such subscribing witness was known to the officer granting the certificate, to be the person whose name is subscribed to such conveyance as a witness thereto, or was proved to be such by oath or affirmation of a witness, whose name shall be inserted in the certificate.

Second—The proof given by such witness of the execution of such conveyance, and of the facts that the person whose name is subscribed to such conveyance as a party thereto, is the person whose name is subscribed to such conveyance as a party thereto, and is the person who executed the same, and that such witness subscribed his name to such conveyance as a witness thereof.

Subscribing witnesses must be dead, or cannot be had.

SEC. 15. No proof of evidence of the hand writing of the party, and of a subscribing witness, shall be taken unless the officer taking the same shall be satisfied that all the subscribing witnesses to such conveyance are dead, or cannot be had to prove the execution thereof.

Condition precedent to granting certificate of proof.

SEC. 16. No certificate of such proof shall be granted unless a competent and credible witness shall state on oath or affirmation that he personally knew the person whose name is subscribed thereto as a party, well knew his signature, (stating his means of knowledge), and believes the name of the person subscribed thereto as a party was subscribed by such person; nor unless a competent and credible witness shall in like manner state that he personally knew the person whose name is subscribed to such conveyance as a witness, well knew his signature (and stating his means of knowledge), and believes the name subscribed thereto as a witness was thereto subscribed by such person.

Subpœna for witness to prove execution.

SEC. 17. Upon the application of any grantee in any conveyance required by this act to be recorded, or by any person claiming, under such grantee, verified under the oath of the applicant, that any witness to such conveyance residing in the county where such application is made, refuses to appear and testify touching the execution thereof, and that such conveyance cannot be proved without his evidence, any officer authorized to take the acknowledgment for proof of such conveyance, may issue a subpœna requiring such witness to appear before such officer, and testify touching the execution thereof.

Compelling attendance of witness.

SEC. 18. Every person who, being served with a subpœna, shall, without reasonable excuse, refuse or neglect to appear, or appearing shall refuse to answer upon oath touching the matter aforesaid, shall be liable to the party injured in the sum of one hundred dollars, and for such damages as may be sustained by him on account of such neglect or refusal, and may also be committed to prison by the judge of some court of record, there to remain, without bail, until he shall submit to answer upon oath as aforesaid; but no person shall be required to attend who resides out of the county in which the proof is to be taken, unless his reasonable expenses be first tendered.

Proof of execution may be recorded.

SEC. 19. A certificate of the acknowledgment of any conveyance, or of the proof of the execution thereof, as provided in this act, signed by the officer taking the same and under the seal of the officer, shall entitle such conveyance, with the certificate or certificates as aforesaid, to be recorded in the office of the recorder of any county in this Territory.

Conveyance by married woman.

SEC. 20. A married woman may convey any of her real estate by any conveyance thereof executed and acknowledged by herself and her husband, and certified in the manner provided, by the proper officer taking the acknowledgment.

Who may take acknowledgment of married woman.

SEC. 21. Any officer authorized by this act to take the proof or acknowledgment of any conveyance whereby any real estate is conveyed or may be effected, may take and certify the acknowledgment of a married woman to any such conveyance of real estate.

Acknowledgment by married woman.

SEC. 22. No such acknowledgment shall be taken unless such married woman shall be personally known to the officer taking the same, to be the person whose name is subscribed to such conveyance, as a party thereto, or shall be proved to be such by a credible witness, nor unless such married woman shall be made acquainted with the contents of such conveyance, and shall acknowledge, on examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or under influence of her husband, and that she does not wish to retract the execution of the same.

Certificate of acknowledgment of married woman.

SEC. 23. The certificate shall be in the form heretofore given, and shall set forth that such married woman was personally known to the officer granting the same, to be the person whose name is subscribed to such conveyance as a party thereto, or was proved to be such by a credible witness, whose name shall be inserted in the certificate, and that she was made acquainted with the contents of such conveyance and acknowledged on examination, apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or under influence of her husband, and that she does not wish to retract the execution of the same. Every certificate which substantially conforms to the requirements of this act shall be valid.

Conveyance must be recorded.

Sec. 24. Every conveyance of real estate, and every instrument of writing setting forth an agreement to convey any real estate or whereby any real estate may be effected, proved, acknowledged, and certified in the manner prescribed in this act, to operate as notice to third persons, shall be recorded in the office of the recorder of the county in which such real estate is situated, but shall be valid and binding between the parties thereto without such record.

Record imparts notice.

Sec. 25. Every such conveyance and instrument in writing, acknowledged or proved and certified, and recorded in the manner prescribed in this act, shall, from the time of filing the same with the recorder for record, impart notice to all persons of the contents thereof, and subsequent purchasers and mortgagees shall be deemed to purchase and take with notice.

Unrecorded conveyances void as to subsequent purchasers.

Sec. 26. Every conveyance of real estate within this Territory, hereafter made, which shall not be recorded as provided for in this act, shall be void as againt any subsequent purchaser, in good faith, and for a valuable consideration, of the same real estate or any portion thereof, where his own conveyance shall be first duly recorded.

Powers of attorney, etc., to be acknowledged and recorded.

Sec. 27. Every power of attorney, or other instrument, in writing, containing the power to convey any real estate as agent or attorney for the owner thereof, or to execute as agent or attorney for another, any conveyance whereby any real estate is conveyed or may be effected, shall be acknowledged or proved, and certified and recorded as other conveyances whereby any real estate is conveyed or effected, are required to be acknowledged or proved, and certified and recorded.

Revocation to be recorded.

Sec. 28. No such power of attorney, or other instrument, certified and recorded in the manner prescribed in the preceding section, shall be deemed to be revoked by any act of the party by whom it was executed, until the instrument containing such revocation shall be deposited for record in the same office in which the instrument containing the power is recorded.

Instruments acknowledged and recorded, to be read in evidence.

Sec. 29. Every conveyance, or other instrument conveying or effecting real estate, which shall be acknowledged, or proved, and certified as hereinafter prescribed, may, together with the certificate of acknowledgment of proof, be read in evidence without further proof.

When lost, transcript of record may be used in evidence.

SEC. 30. When any such conveyance, or instrument, is acknowledged, or proved, certified and recorded in the manner herein prescribed, and it shall be shown to the court that such conveyance or instrument is lost, or not within the power of the party wishing to use the same, the record thereof, or the transcript of such record, certified by the recorder, under the seal of his office, may be read in evidence without further proof.

Not conclusive, may be rebutted.

SEC. 31. Neither the certificate of the acknowledgment, nor of the proof of any such conveyance or instrument, nor the record, nor the transcript of the record of such conveyance or instrument, shall be conclusive, but the same may be rebutted.

When proof taken upon oath of incompetent witness.

SEC. 32. If the party contesting the proof of any such conveyance or instrument, shall make it appear that any such proof was taken upon the oath of an incompetent witness, neither such conveyance or instrument, nor the record thereof, shall be received on evidence, until established by other competent proof.

Estate acquired subsequent to conveyance thereof, inures to benefit of grantee.

SEC. 33. If any person shall convey any real estate by conveyance purporting to convey the same in fee simple absolute, and shall not at the time of such conveyance have the legal estate in such real estate, but shall afterwards acquire the same, the legal estate subsequently acquired, shall immediately pass to the grantee and such conveyance shall be valid as if such legal estate had been in the grantor at the time of the conveyance.

Person out of possession, may convey his interest.

SEC. 34. Any person claiming title to any real estate, may, notwithstanding there may be an adverse possession thereof, sell and convey his interest therein in the same manner and with the same effect as if he was in actual possession thereof.

Real estate defined.

SEC. 35. The term "real estate," as used in this act, shall be construed as co-extensive in meaning with lands, tenements, heridetaments, and possessary titles to public lands in this Territory.

Conveyance defined.

SEC. 36. The term "conveyance," as used in this act, shall be construed to embrace every instrument in writing by which any real estate, or interest in real estate, is created alienated, mortgaged, or assigned, except wills, leases for a term not exceeding one year, and executing contracts for the sale or purchase of lands.

Personal entry of satisfaction of mortgage.

SEC. 37. Any mortgage that has been or may hereafter be recorded, may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage, in the presence of the recorder, or his deputy, who shall subscribe the same as a witness; such entry shall have the same effect as a deed of release duly acknowledged and recorded.

Entry of satisfaction upon certificate presented.

Sec. 38. Any mortgage shall also be discharged upon the record thereof, by the recorder in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee, his personal representative or assignee, acknowledged, or proved, and certified as hereinbefore prescribed to entitle a conveyance to be recorded, specifying that such mortgage has been paid, or otherwise satisfied or discharged.

Certificate of satisfaction to be recorded.

Sec. 39. Every such certificate, and the proof and acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book containing such record in the minutes of the discharge of such mortgage, made by the recorder upon the margin of the record thereof.

Mortgagee liable for refusing to give certificate discharge.

Sec. 40. Any mortgagee or his personal representative or assignee, as the case may be, after a full performance of the conditions of the mortgage, whether before or after a breach thereof, who shall, for the space of seven days after being thereto requested, refuse or neglect to execute and acknowledge a certificate of discharge or release thereof, shall be liable to the mortgagor, his heirs or assigns, in the sum of one hundred dollars, and also for all actual damages occasioned by such neglect or refusal.

Conveyances heretofore made.

Sec. 41. All conveyances of real estate heretofore made and acknowledged, or proved, according to the laws in force at the time of such making and acknowledgment or proof, shall have the same force as evidence, and be recorded in the same manner and with like effect as conveyances executed and acknowledged in pursuance of this act.

Conveyances not affected by this act.

Sec. 42. The legality of the execution, acknowledgment, proof, form, or record of any conveyance or other instrument heretofore made, executed, acknowledged, proved or recorded, shall not be affected by anything contained in this act, but shall depend for its validity or legality upon the laws then existing and in force.

Tenancy in common.

Sec. 43. Every interest in real estate, granted or devised to two or more persons other than executors or trustees, as such, shall be a tenancy in common, unless expressly declared in the grant or devise to be otherwise.

"Heirs," etc. not necessary,

Sec. 44. The term "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee simple, and every conveyance of any real estate, hereafter executed, shall pass all the estate of the grantor, unless the intent to pass a less estate shall appear by express terms, or be necessarily implied in the terms of the grant.

In remainder estate "heirs" or "issue" construed.

SEC. 45. Where a remainder in lands or tenements, goods or chattels, shall be limited by deed, or otherwise, to take effect on the death of any person without heir or heirs of his or her body, or without issue, the words "heirs" or "issue" shall be construed to mean heirs or issue living at the death of the person named as ancestor.

Future estate, how defeated.

SEC. 46. A future estate, depending on the contingency of the death of any person without heirs or issue, or children, shall be defeated by the birth of a posthumous child of such person capable of taking by descent.

Contingent remainder, issue born after the same as in lifetime of the father.

SEC. 47. When an estate shall by any conveyance be limited in remainder to the son or daughter, or issue, or to the use of the son or daughter, or issue to be begotten, such son, daughter, or issue born after the decease of his or her father, shall take the estate in the same proportion and in the same manner as if he or she had been born in the lifetime of the father, although no estate shall have been created or conveyed to support the contingent remainder after his death.

No attornment necessary.

SEC. 48. Grants of rents, or of reversions or remainders, shall be good and effectual without attornment of the tenants, but no tenant who, before notice of the grant, shall have paid rent to the grantor shall suffer any damage thereby.

Attornment to stranger void.

SEC. 49. The attornment of a tenant to a stranger shall be void unless it be with the consent of the landlord of such tenement, or in pursuance to or in consequence of a judgment or decree of some court of competent jurisdiction.

Liability of heirs on covenants of title.

SEC. 50. Lineal or collateral warrantees with all their incidents are abolished, but the heirs and devisees of every person who shall have made any covenant or agreement in reference to the title of, in, or to any real estate, shall be answerable upon such covenant, or agreement, to the extent of the land descended or devised to them in the case and in the manner prescribed by law.

"Grant," "bargain" and "sell" construed.

SEC. 51. The words "grant," "bargain" and "sell," in all conveyances hereafter made, in and by which any estate of inheritance, possessory title or fee simple is to be passed, shall, unless restrained by express terms contained in such conveyances, be construed to be the following express covenants, and none other, on the part of the grantor, for himself, his heirs, to the grantee, his heirs and assigns:

First—That previous to the time of the execution of such conveyance, the grantor has not conveyed the same real estate, or any right, title, or interest therein, to any person other than the grantee.

Second—That such real estate is, at the time of the execution of such conveyance, free from encumbrances, done, made, or suffered by the grantor, or any person claiming under him; and such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

Instruments heretofore recorded, to impart notice.

SEC. 52. All instruments of writing mentioned in this act, now copied in the proper books of record of the several counties in this Territory, acknowledged and recorded in accordance with the laws in force and effect at the time such instruments were so acknowledged and recorded, shall, after the passage of this act be deemed to impart to subsequent purchasers and encumbrancers, and all other persons whomsoever, notice of all such deeds, mortgages, powers of attorney, or other instruments so far as to the extent the same may be found recorded, copied, or noted in the said books of record.

APPROVED *January* 12, 1875.

AN ACT

CONCERNING FRAUDULENT CONVEYANCES AND CONTRACTS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Fraudulent conveyances void etc.
2. Qualification of last section.
3. Conveyances with power of revocation void, etc.
4. Conveyances by one authorized to revoke former grants.
5. Explanation of the two last sections.
6. Requisite to convey certain interests in lands.
7. Qualification of last section.
8. Of contracts to lease or sell land.
9. Same.
10. Powers of courts of equity.
11. Personal property, certain transfers of, void.
12. Certain agreements to be in writing.
13. Contracts for sale of personal property.
14. Sales at auction.
15. Delivery and possession necessary to certain transfers of goods, etc.
16. Who to be deemed creditors.
17. Agents may transfer.
18. Conveyances, to hinder or delay creditors void.
19. Conveyances void as to heirs, etc.
20. Rules applicable to cases under this chapter.
21. As to purchasers.
22. Terms, and construction of.
23. Term conveyance, defined.

Fraudulent conveyances void etc SECTION 1. Every conveyance of any estate or interest in lands or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers, for a valuable consideration of the same lands, rents, or profits, as against such purchasers, shall be void.

Sec. 2. No such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser who shall have legal notice thereof at the time of such purchase, unless it shall appear that the grantee in such conveyance, or person to be benefitted by such charge was privy to the fraud intended.

Qualification of last section.

Sec. 3. Every conveyance or charge of or upon, any estate or interest in lands containing any provisions for revocation, determination or alteration of such estate or interest or any part thereof, at the will of the grantor, shall be void as against subsequent purchasers from said grantor, for a valuable consideration of any estate or interest so liable to be revoked, or, determined, although the same be not directly revoked, determined or altered by such grantor by virtue of the power reserved or expressed in such prior conveyance or charge.

Conveyances with power of revocation void etc.

Sec. 4. Where a power to revoke a conveyance of lands, or the rents and profits thereof, and to re-convey the same, shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents and profits to a purchaser for a valuable consideration, such subsequent conveyance shall be valid in the same manner and to the same extent as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared.

Conveyances by one authorized to revoke former grants.

Sec. 5. If a conveyance to a purchaser under either of the two last preceding sections shall be made before the person making the same shall be entitled to execute his power of revocation, it shall nevertheless be valid from the time the power of revocation shall actually vest in such person, in the same manner and to the same extent as if then made.

Explanatory of the two last sections.

Sec. 6. No estate or interest in lands other than for leases, for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered, or declared, unless by act or operation of law, or by deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent thereunto authorized by writing.

Requisites to convey certain interests in lands.

Sec. 7. The preceding section shall not be construed to affect in any manner the power of a testator in the disposition of his real estate, by a last will and testament, nor prevent any trust arising or being extinguished by operation of law.

Qualification of last section.

Of contracts to lease or sell land.

SEC. 8. Every contract for the leasing for a longer term than one year, or for the sale of any lands or interest in lands, shall be void, unless the contract or some note or memorandum thereof, expressing the consideration, be in writing, and be subscribed by the party by whom the lease or sale is to be made.

Same.

SEC. 9. Every instrument required to be subscribed by any person mentioned in the last preceding section, may be subscribed by the agent of the party lawfully authorized.

Powers of courts of equity.

SEC. 10. Nothing contained in this act shall be construed to abridge the power of the courts to compel the specific performance of such agreements.

Personal property, certain transfers of, void.

SEC. 11. All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels or things in action, made in trust for the use of the person making the same, shall be void as against the creditors existing or subsequent of such person.

Certain agreements to be in writing.

SEC. 12. In the following cases, any agreement shall be void, unless such agreement or some note or memorandum thereof expressing the consideration be in writing, and subcribed by the party charged therewith:

First—Every agreement that by the terms is not to be performed within one year from the making thereof.

Second—Every special promise to answer for the debt or default or miscarriage of another.

Third—Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry.

Contracts for sale of speronal property.

SEC. 13. Every contract for the sale of any goods, chattels or things in action, for the price of two hundred dollars and over, shall be void, unless—

First—A note or memorandum of such contract be made in writing and be subscribed by the parties to be charged therewith; or—

Second—Unless the buyer shall accept or receive a part of such goods or the evidences or some of them of such things in action.

Third—Or unless the buyer shall at the time pay some part of the purchase money.

Sales at auction.

SEC. 14. Whenever goods shall be sold at auction, and the auctioneer shall at the time of sale, enter in a sales-book a memorandum, specifying the nature and price of the property sold, the terms of the sale, the names of the purchasers, and the name of the person on whose account the sale is made, such memorandum shall be deemed a note of the contract of sale, within the meaning of the last section.

SEC. 15. Every sale made by a vendor of goods and chattels in his possession or under his control, and every assignment of goods and chattels, unless the same be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of the thing sold or assigned, shall be presumptive evidence of fraud as against the creditors of the vendor or the creditors of the person making such assignment, or subsequent purchases in good faith.

Delivery and possession necessary to certain transfers of goods, etc.

SEC. 16. The term "creditors," as used in the last section shall be construed to include all persons who shall be creditors of the vendor or assignor, at any time while such goods and chattels shall remain in his possession or under his control.

Who to be deemed creditors.

SEC. 17. Every instrument of writing required by any of the provisions of this act to be subscribed by any party, may be subscribed by the lawful agent of such party.

Agents may transfer.

SEC. 18. Every conveyance or assignment in writing or otherwise, of any estate or interest in lands, or in goods in action, or of the rents or profits thereof made with the intent to hinder, delay or defraud creditors or other persons, of their lawful suits, damages, forfeitures, debts or demands, and every bond or other evidence of debt given, suits commenced, decree or judgment suffered, with the like intent as against the persons hindered, delayed or defrauded, shall be void.

Conveyances etc. to hinder or delay creditors, void.

SEC. 19. Every conveyance, charge, instrument or proceeding declared to be void by the provisions of this act, as against creditors or purchasers, shall be equally void as against the heirs, successors, and personal representatives or assigns of such creditors or purchasers.

Conveyances void as to heirs etc,

SEC. 20. The question of fraudulent intent, in all cases arising under this act, shall be deemed a question of fact, and not of law, nor shall any conveyance or change be adjudged fraudulent as against creditors or purchasers solely on the ground that it was not found on a valuable consideration.

Rules applicable to cases under this chapter.

SEC 21. The provisions of this act shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor or of the fraud rendering void the title of such grantor.

As to purchasers.

SEC. 22. The term "lands," as used in this act, shall be construed as co-extensive in meaning with lands, tenements, hereditaments and possessory land claims to public lands, and the terms "estate" and "interest in

As to certain terms.

lands," shall be construed to embrace every estate and interest, present and future, vested and contingent, in lands as above defined.

Term "conveyance."

SEC. 23. The term "conveyance" as used in this act, shall be construed to embrace every instrument in writing, except a last will and testament, whatever may be its form, and by whatever name it may be known in law, by which any estate or interest in lands is created, alienated, assigned or surrendered.

APPROVED *January* 6, 1875.

AN ACT

FOR SECURING LIENS TO MECHANICS AND OTHERS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Lienholders and liens.
2. Filing the account in recorder's office; time, etc.
3. Lien of sub contractor; rights against owner and contractor; rights of owner; funds in hands of owner cannot be attached.
4. The land subject to lien; lien preferred to all other subsequent incumbrances.
5. Intention specified; duty of recorder; lien attaches from filing.
6. Lien expires in six months unless suit is brought.
7. When enforced, complaint, etc.; notice to other lien holders the hearing. reference, sale of premises ordered, amount apportioned.
8. Right of action not affected.
9. When satisfaction must be entered, penalty.
10. Lien for grading lot or street, when and how obtained.
11. Lien for cutting or cording timber, lien on timber cut on public lands.
12. Lien of sub-contractor on quartz claim, time, manner, etc.
13. Lien on quartz claim, persons, time, manner etc.
14. Ditches, etc. included.
15. Lien on personal property, manner of proceeding, etc.
16. Liens heretofore recorded.

SECTION 1. All artisans, builders, mechanics, lumber merchants, and all other persons performing labor or furnishing material to the amount of twenty-five dollars for the construction, repairing, preservation or taking care of any building or other superstructure, shall have a lien on such building or superstructure for the work and labor done or material furnished by each, respectively. Lien holders and liens.

Filing the account in recorder's office, time, etc.

SEC. 2. Every person wishing to avail himself of the benefits of this act shall file in the county recorder's office, which shall be by him recorded in a book to be kept for that purpose, of the county in which such building or superstructure is situated, within sixty days after the completion of such building, superstructure or repairs, a just and true account of the demands due him, after deducting all proper credits and offsets, and shall verify such account by his own oath or the oath of some other person, and shall also file at the same time a correct description of the property to be charged with said lien. If such lien is claimed by a sub-contractor, journeyman, or any other person except the contractor performing labor or furnishing material, the account aforesaid shall be filed within thirty days after the work was done or the materials were furnished by him; and within five days after the filing of said account as aforesaid, he shall serve a copy thereof on the owner of such building or superstructure, or on the agent of such owner, if the latter resides out of the county in which such building or superstructure is situated, by delivering the same to him personally or by leaving it at his usual place of residence. If such owner does not reside within the county, and has no agent therein, service of the copy aforesaid may be made by posting the same in a conspicuous place on the building or superstructure to be charged with such lien.

Lien of sub-contractor, rights against owner and contractor.

SEC. 3. Every sub-contractor, journeyman, laborer, or other person performing labor or furnishing materials, shall, under the provisions of this act, have a valid lien upon the building or superstructure on which such labor was performed, or for which such materials were furnished, regardless of the claim of the contractor against the owner of such building or superstructure; but if any money be due, or is to become due under the contract, from said owner to said contractor, on being served with a notice by such sub-contractor, as provided in the last preceding section, said owner may withhold out of the money first due, or to become due under the contract, a sufficient sum to cover the lien claimed by such sub-contractor, journeyman, laborer, or other person performing the labor, or furnishing the materials, until the validity thereof shall have been established by proper legal proceedings, if the same be contested; and if so established, the amount thereof shall be a valid offset to that extent in favor of the owner against the contractor; and after such notice shall have been properly served upon such owner or owners, in case of failure to comply with the provisions of this section, then such sub-contractor shall have power to sue and recover from such owner or owners, whatever amount he may have lost by such failure. No attachment served on the funds, in the hands of the owner of such building or superstructure, for claims other than expressed in this acts shall lie against the liens created by this act, nor shall such owner be held or legally bound to answer such attachment, until all claims under the contract, or liens created by this act shall first be satisfied.

The land subject to lien.

SEC. 4. The land upon which any building or superstructure shall be erected, together with a convenient space around the same, or so much as may be necessary for the convenient use and occupation of the premises, shall also be subject to the liens created by this act, if, at the time the labor was commenced, or the first of the materials were furnished, the land belonged to the person who caused the said building or superstructure to be erected. But if such person owned less than a fee simple estate in said land, then only his interest therein shall be subject to such lien; and the liens created by this act shall be preferred to every other lien or incumbrance which shall have attached upon said property subsequent to the time at which the work was commenced or the first of the materials were furnished, and also, to all mortgages and other incumbrances not recorded at the time such work was commenced, or the first of the materials were furnished; but nothing herein contained shall be construed as impairing any incumbrance upon the said land duly made and recorded before such work was commenced, or the first of such materials were furnished.

Intention specified.

SEC. 5. The account required to be filed by the second section of this act, shall specify that it is the intention of the holder thereof to claim a lien upon the premises sought to be charged therewith, and it shall be the duty of the county recorder to file and record such notice and account, in a separate book to be provided for the purpose, and from the time of such filing all persons shall be deemed to have notice thereof.

Lien expires in six months, unless suit is brought.

SEC. 6. No such lien shall bind any building or superstructure for a longer period than six months after filing the same, unless suit be brought in a proper court within that time to enforce the same, or if a credit be given, then within six months after the expiration of the credit; but no lien shall be continued in force for a longer time than two years from the time the work is completed, or the material furnished, by an agreement to give credit.

Where enforced, complaint, etc.

SEC. 7. Said liens may be enforced by suit in any court of competent jurisdiction, on setting forth in the complaint the particulars of such demand, with a description of the premises sought to be charged with said lien; and at the time of filing the complaint and issuing summons, the plaintiff shall cause a notice to be published at least once a week for three consecutive weeks in some newspaper published in the county, if there be one, and if not, then in such mode as the court or judge thereof, shall direct, notifying all persons holding or claiming liens under the provisions of this act, on said premises, to be and appear in said court on the day specified therein, and to exhibit then and there the proof of said liens. On the appointed day, the court shall proceed to hear and determine the said claims in a summary way, or may refer the same to a referee to ascertain and report upon said liens and the amount justly due thereon; and all liens not so exhibited and proved shall be deemed to be waived in favor of those which are so exhibited. On ascertaining the whole amount of said liens with which said premises are justly chargeable as hereinafter provided, the court shall cause said premises to be sold in satisfaction of said liens and costs of suit; and any party in whose favor such judgment may be rendered, may cause the premises to be sold within the time and manner provided for sales on execution at law; and if the proceeds of such sale be not sufficient to satisfy the whole of such liens established as aforesaid, then the same shall be apportioned according to the rights of the several parties.

Right of action not affected.

SEC. 8. Nothing herein contained shall be construed to take away, or affect in any manner, any action which any such contractor, laborer, sub-contractor, or other person performing labor, or furnishing materials for such building or superstructure, would otherwise have against his employer.

When satisfaction must be entered, penalty.

SEC. 9. The holder of such lien, filed as aforesaid, on payment thereof shall enter satisfaction of the same on record, at the request of any one interested in the property charged with the lien, within ten days after the request, on the payment of the costs of such entry, and on failure to enter such satisfaction, he shall forfeit and pay to the party aggrieved the sum of fifty dollars per day until such satisfaction shall be entered, to be recovered in the same manner as other debts are recovered

Lien for grading lots on street, when and how obtained.

SEC. 10. When any person shall make an express contract in writing with the owners of any lot or lots, in any city or town, or with the person or persons who were at the time of such contract in the actual possession of such lot or lots, by himself or themselves, or by his or their tenants, under *bona fide* claim or ownership, to grade, fill in, build upon, or otherwise improve the same, or the street in front of and adjoining the same, and shall go on and complete the said grading, filling in or improving said lot or street adjoining the same, it shall be considered an improvement on said lot or lots, and he or they shall have a lien upon such lot or lots, for the amount contracted to be paid; and all the provisions of this act, respecting the mode of recording, securing, and enforcing mechanics' liens shall apply thereto.

Lien for cutting and cording timber.

SEC. 11. When any person or persons make an express contract in writing, with the owner or owners of any tract or tracts of land, or with the person or persons who were at the time of such contract in the actual *bona fide* possession of such tract or tracts of land, by himself or themselves, or tenant or tenants, to cut and cord the timber growing or being thereon, or any portion thereof, or for the purchase of said timber or any portion thereof, to be paid for when the same shall be cut and corded and shall go on and complete such contract, he or they shall have a lien on such wood so cut and corded, for the amount contracted to be paid, and may hold, take and retain possession of such wood until such contract price shall be paid, and if not paid within one month after the contract shall be completed, or work done or purchase made as aforesaid, then all the provisions of this act, respecting the mode of securing and enforcing mechanics' liens, shall apply thereto; and any person or persons cutting cord wood, saw-logs or other timber upon any of the public lands for another, may have a lien upon such cord wood, saw-logs or other timber so cut for the amount due for cutting the same and may retain possession thereof until the amount due shall be paid, and if not paid within a month may file and enforce their lien in accordance with the provisions of this act; and any person hauling or handling any such cord-wood, saw-logs or timber may likewise hold the same and file and enforce a lien thereon in accordance with the provisions of this act.

Lien of sub contractor on quartz claim, time, manner etc.

SEC. 12. Every sub-contractor, journeyman, laborer or other person, performing labor or furnishing materials for any contractor, in or upon any quartz claim, ledge or mine, in working the same or in the improvement or development thereof, in the completion or performance of any contract entered into by any person, in this Territory, every such person or persons, so performing such labor or furnishing such material, shall have a lien upon all the interest in such quartz claim, ledge or mine, of the person or persons employing him or them, or purchasing such materials with the improvements thereon and appurtenances thereto belonging, and also upon all the interest of the person or persons letting such contract, or of the person or persons for whom such person or persons acts as agent, or the owner or owners for the value of such work, or labor, or materials furnished, and all the provisions of this act shall apply in respect to recording, recovering, and enforcing such liens provided for in this section: *provided*, the person or persons claiming such lien shall within thirty days after the performance of such labor or furnishing such materials, give notice in writing to any person or persons, agent or agents, owner or owners, and shall within forty days file their lien in other respects as provided by this act.

Lien on quartz claim, persons, time, manner etc.

SEC. 13. When any person or persons shall do or perform any work or labor in or upon or for any quartz claim, mine or ledge in working the same or in the improvement or development thereof; or in the preparation of the ores thereof for reduction; or in the hauling of the ores thereof; or shall perform labor or service as superintendent, manager or foreman of any mine or ledge, or shall perform labor as a mechanic or artisan therefor, such person or persons shall have a lien upon all the interests in such quartz claim, ledge or mine, of the person or persons employing him or them or purchasing such materials, together with the improvements thereon and appurtenances for the value of such work, labor or services, or materials furnished and all the provisions of this act respecting the filing, recording and recovering and enforcing mechanics' liens are made applicable to this section: *provided*, the person or persons claiming such liens shall, within sixty days after the completion of such work or labor or rendering said services, or furnishing said materials, file their lien in other respects as provided by this act.

Ditches, etc. included.

SEC. 14. This act shall be so construed as to include in its provisions, bridges, ditches, flumes, aqueducts, to create hydraulic power for mining purposes, and all improvements on mining claims.

Lien on personal property.

SEC. 15. Any artisan or mechanic who shall make, alter, or repair any article of personal property, at the request of the owner or legal possessor of such property, shall have a lien on such property, so made, altered, and repaired for his just and reasonable charges, for his work done and material furnished, and may hold and retain possession of the same, until such reasonable and just charges shall be paid, and if not paid within two months after the work shall be done, such mechanic or artisan may proceed to sell the property by him so made, altered or repaired, at public auction, by giving three weeks notice of such sale by advertisement in some newspaper published in the county in which the work may be done, or if there is no such newspaper, then by posting up notices of such sale in three of the most public places in the town where such work was done, and the proceeds of said sale shall be applied,

First—To the discharge of such lien and the costs and expenses of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof.

Liens heretofore recorded.

SEC. 16. All liens or notices of liens heretofore recorded with the county recorders of the several counties of this Territory, shall be held and considered valid in law, for all interests and purposes, as if the same had been recorded in pursuance of the provisions of this act.

APPROVED *January* 11, 1875.

AN ACT

CONCERNING CORPORATIONS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. For what purposes corporations may be formed, limitations of.
2. How a corporation is formed, the certificate, what to contain when filed.
3. What the certificate proves.
4. The corporation, its powers.
5. Board of Trustees, their election, etc.
6. Election, valid, whenever held.
7. Majority of Board rules.
8. First meeting of Trustees, how called.
9. Transfer of stock, how made.
10. Powers of Trustees, levy of assessments, their collection.
11. The Trustees etc. to represent stock held in trust.
12. Stock may be pledged, yet represented.
13. Fictitious dividends forbidden.
14. Indebtedness not to exceed paid in capital stock, liability of Trustees.
15. Not to issue notes, etc. as money.
16. Liability of stock holders individually.
17. The Trustees, etc., or collateral holder of stock, not personally liable.
18. Books of mining and water companies open to inspection, transcripts from.
19. Penalty, etc. upon officer or the corporation for disobeying this act.
20. May increase or diminish capital stock.
21. Proceedings to increase or diminish stock.
22. Certificate of proceedings of meeting to increase stock, etc., to be filed in certain offices.
23. Dissolution, duties and powers of Trustees upon.
24. Dissolution, proceedings to effect.
25. There being no officer to call or preside at meetings, how to proceed.
26. At such meeting, officers may be elected and other business transacted.

For what purposes corporations may be formed.

SECTION 1. Corporations for manufacturing, mining, mechanical, chemical or agricultural purposes, for constructing telegraph lines, for making roads, for establishing ferries, for building bridges, for conveying water, or for the purpose of engaging in any species of trade or commerce, or the construction and operation of irrigating ditches and canals and of the lands in connection therewith, or for colleges, seminaries, churches, libraries, or any benevolent, charitable or scientific association, may be formed according to the provisions of this act; such corporation and members thereof being subject to the conditions and liabilities herein imposed, and to none other; *provided*, that nothing in this section shall be so construed as to authorize a company formed under it to own or hold possession of more than fourteen hundred and forty acres of land, or to authorize an individual member of such company or association, in his coporate capacity, to hold, own or possess a number of acres to exceed eighty; and *provided* further, that no corporation formed for agricultural purposes shall be allowed to hold any mineral lands under the provisions of this act.

How a corporation is formed, the certificate, what to contain, where filed.

SEC. 2. Any three or more persons who may desire to form a company for one or more of the purposes specified in the preceding section, may make, sign, and acknowledge before some officer competent to take the acknowledgment of deeds, and file in the office of the clerk of the district court of the judicial district in which the principal place of business of the company is intended to be located, and a certified copy thereof, under the hand of the clerk and seal of said court in the said district, in the office of the secretary of the Territory, a certificate in writing, in which shall be stated the corporate name of the company, the object for which the company shall be formed, the amount of its capital stock, the time of its existence, not to exceed fifty years, the number of shares of which the stock shall consist, the number of trustees, and their names, who shall manage the concerns of the company for the first three months, and the name of the city or town and county in which the principal place of business of the company is to be located.

What the certificate proves.

SEC. 3. A copy of any certificate of incorporation filed in pursuance of this act, and certified by the county clerk, or the clerk of the district court in the county or district in which it is filed, or his deputy, or by the secretary of the Territory, shall be received in all courts and places, as presumptive evidence of the facts therein stated.

The corporation, its powers.

SEC. 4. When the certificate shall have been filed, the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate, in fact and in name, by the name stated in the certificate, and by their corporate name, shall have succession for the period limited, and power:

First—To sue and be sued in any court.

Second—To make and use a common seal, and alter the same at pleasure.

Third—To purchase, hold, sell and convey such real and personal estate as the purposes of the corporation shall require.

Fourth—To appoint such officers, agents and servants as the business of the corporation may require, to define their powers, prescribe their duties, and fix their compensation.

Fifth—To require of them such security as may be thought proper for the fulfillment of their duties, and to remove them at will, except that no trustee shall be removed from office unless by a vote of two-thirds of the whole number of trustees, or by a vote of a majority of the trustees upon a written request signed by stock holders legally representing two-thirds of the whole stock.

Sixth—To make by-laws, not inconsistent with the laws of this Territory, or of the United States, for the organization of the company, the management of its prosperity, the regulation of its affairs, the transfer of its stock, and for carrying on all kinds of business within the objects and purposes of the company.

Board of trustees, their election, etc.

SEC. 5. The corporate powers of the corporation shall be exercised by the board of not less than three trustees, who shall be stock holders in the company, and a majority of them citizens of the United States, and residents of this Territory and who shall after the expiration of the term of the trustees first elected, be annually elected by stock holders, at such time and place, and upon such notice, and in such mode as shall be directed by the by-laws of the company; but all elections shall be by ballot, and each stock holder, either in person or by proxy, shall be entitled to as many votes as he owns shares of stock; and the persons receiving the greatest number of votes shall be and act as trustees. When any vacancy shall happen among the trustees by death, resignation or otherwise, it shall be filled for the remainder of the year in such manner as may be provided by the by-laws of the company.

Election, valid whenever held.

SEC. 6. If it should happen at any time that an election of trustees shall not be made on the day designated by the by-laws of the company, the corporation shall not for that reason be dissolved, but it shall be lawful on any other day to hold an election for trustees in such manner as shall be provided for by the by-laws of the company; and all acts of trustees shall be valid and binding upon the company until successors shall be elected.

Majority of board rules.

SEC. 7. A majority of the whole number of trustees shall form a board for the transaction of business, and every decision of a majority of the persons duly assembled as a board shall be valid as a corporate act.

First meeting of trustees, how called.

SEC. 8. The first meeting of the trustees shall be called by a notice signed by one or more of the persons named trustees in the certificate, setting forth the time and place of meeting, which notice shall be either delivered personally to each trustee or published at least ten days in some newspaper of the county in which is the principal place of business of the corporation, or if no newspaper be published in the county, then in some newspaper published nearest thereto.

Transfer of stock, how made.

SEC. 9. The stock of the company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no transfer shall be valid, except between the parties thereto, until the same shall have so entered on the books of the company as to show the names of the parties by and to whom transferred, the number and designation of the same, and the date of the transfer.

Powers of trustees Levy of assessments; their collection.

SEC. 10. The trustees shall have power to call in, and demand from the stockholders the sums by them subscribed, at such times and in such payments or installments as they may deem proper; notice of such assessment shall be given to the stockholders personally, or shall be published once a week for at least four weeks in some newspaper published at the place designated as the principal place of business of the corporation, or if none is published there, in some newspaper published nearest to such place.

If, after such notice shall have been given, any stockholder shall make default in the payment of the assessment upon the shares held by him, so many of such shares may be sold as will be necessary for the payment of the assessment on all the shares held by him. The sale of said shares shall be made as prescribed in the by-laws of the company; *provided*, that no sale shall be made except at public auction to the highest bidder, after a notice of thirty days, published as above directed in this section; and that at such sale the person who will agree to pay the assessment so due, together with the expense of advertisement and the other expenses of sale, for the smallest number of whole shares, shall be deemed the highest bidder.

The trustees, etc., to represent stock held in trust.

SEC. 11. Whenever any stock is held by any person as executor, administrator, guardian or trustee, he shall represent such stock at all meetings of the company and vote accordingly as a stockholder.

Stock may be pledged, yet represented.

SEC. 12. Any stockholder may pledge his stock by a delivery of his certificate or other evidence of his interest, but may nevertheless represent the same at all meetings, and vote accordingly as a stockholder.

Fictitious dividends forbidden.

SEC. 13. It shall not be lawful for the trustees to make any dividend, except from the surplus profits arising from the business of the corporation, nor to divide, withdraw, or in any way pay the stockholders, or any of them, any part of the capital stock of the company; nor to reduce the capital stock unless in the manner prescribed in this act; and in case of any violation of the provisions of this section the trustees under whose administration the same have happened, except those who may have caused their dissent therefrom to be entered at large in the minutes of the Board of Trustees at the time, or were not present when the same did happen, shall in their individual and private capacity, be jointly and severally, liable to the corporation, and the creditors thereof, in the event of its dissolution, to the full amount so divided, withdrawn, paid out or reduced; *provided*, that this section shall not be so construed as to prevent a division and distribution of the capital stock of the company which shall remain after the payment of all its debts, upon the dissolution of the corporation or the extinction of its charter.

Indebtedness not to exceed paid in capital stock. Liability of trustees.

SEC. 14. The total amount of the debts of the corporation shall not at any time exceed the amount of the capital stock actually paid in, and in case of any excess the trustees under whose administration the same may have happened, except those who have caused their dissent therefrom to be entered at large on the minutes of the Board of Trustees at the time, and except those not present when the same did happen, shall, in their individual and private capacities be liable, jointly and severally, to the said corporation, and in the event of its dissolution, to any of the creditors thereof for the full amount of such excess.

Not to issue notes as money.

SEC. 15. No corporation organized under this act, shall by any implication or construction be deemed to possess the power of issuing bills, notes, or other evidences of debt, for circulation as money.

Liability of stockholders individually.

SEC. 16. Each stockholder shall be individually and personally liable for his proportion of all the debts and liabilities of the company contracted or incurred during the time that he was a stockholder for the recovery of which joint or several actions may be instituted; and a judgment in such actions shall be recovered against joint stockholders, the court in the trial thereof shall apportion the amount of the liability of each, and in the execution thereof no stockholder shall be liable beyond his proportion so ascertained.

The trustee etc., or collateral holder of stock not personally liable.

SEC. 17. No person holding stock as executor, administrator, guardian, or trustee, or holding it as collateral security, or in pledge, shall be personally subject to any liability as a stockholder of the company, but the person pledging the stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and the estate and funds in the hands of the executor, administrator, guardian or trustee, shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in the trust fund would have been if he had been living and competent to act and hold the stock in his own name.

Books of mining and water companies; how kept, what to contain; open to inspection, transcripts from.

SEC. 18. It shall be the duty of the trustee of every company incorporated under this act for the purpose of ditching, mining, or conveying water for mining purposes, to cause a book to be kept, containing the names of all persons alphabetically arranged, who are, or shall become, stockholders of the corporation, and showing the number and designation of shares of stock held by them respectively, and the time when they respectively became the owners of such shares; also, a book, or books, in which shall be entered at length, in a plain and simple manner, all by-laws, orders and resolutions of the company and Board of Trustees, and the manner and time of their adoption; which books during the business hours of the day, Sundays, fourth of July and the twenty-fifth day of December excepted, shall be open for the inspection of stockholders and the creditors of the company, each individual stockholder, and their duly authorized agents and attorneys, at the office or principal place of business of the company; *provided*, that the office and books of every such company shall be kept and the books of the company shall be opened as aforesaid, in the county in which their principal business is transacted; and every stockholder and creditor as aforesaid or their agents, or attorneys, shall have the right to make extracts from such books, or upon payment of reasonable clerks fees therefor, to demand and receive from the clerk or other officer having the charge of such books, certified copies of entries; a certified copy of any entry shall be presumptive evidence of the facts therein stated, in any action or proceeding against the company or any one or more of the stockholders.

Penalty etc, upon officer or the corporation for disobeying this act.

SEC. 19. If the clerk or other officer having charge of such books shall make any false entry or neglect to make any proper entry therein, or shall refuse or neglect to exhibit the same, or allow the same to be inspected, or extracts to be taken therefrom, or to give a certified copy of an entry therein as provided in the preceding section, he shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the party injured, a penalty of one hundred dollars, and all damages resulting therefrom, to be recovered in any court of competent jurisdiction in this Territory; and for neglect to keep up such books for inspection and in place provided for in the last section, the corporation shall forfeit to the people of Idaho Territory the sum of two hundred and fifty dollars for every day they shall so neglect, to be sued for, and recovered before, any court of competent jurisdiction in the county or district in which the principal business of such company is transacted; and it shall be the duty of the District Attorney, within and for such District to prosecute such action in the name of, and for the benefit of, the people of Idaho Territory; and it is further provided that, in case any such incorporated company shall refuse or neglect, for the space of one full year after the passage of this act, to comply with the provisions of this and the preceding section, then upon the showing of such facts by petition of any person aggrieved thereby, and due proof thereof before the District Judge in the District in which such company's principal business is transacted, after such company shall have been duly notified thereof by summons, to be issued by said judge, citing such company to appear before such judge at a time and place therein mentioned, which shall not be less than ten nor more than thirty days from the date of such summons, such company shall by said judge be declared and decreed to be disincorporated so far as to deprive said company of all the privileges of this act, but in no manner to effect the remedy of all persons against such company to be exercised as this act provides; *provided*, that nothing contained in the provisions of this section concerning the disincorporation of such companies shall be so construed as to prevent the enforcement of the other remedies in this section mentioned at any time after the passage of this act, except as herein provided.

SEC. 20. Any company incorporated under this act may by complying with the provisions herein contained, increase or diminish its capital stock to any amount which may be deemed sufficient and proper for the purposes of the corporation; but before any corporation shall be entitled to diminish the amount of its capital stock if the amount of its debts and liabilities shall exceed the sum to which the capital is proposed to be diminished, such amount shall be satisfied and reduced so as not to exceed the diminished amount of capital.

SEC. 21. Whenever it is desired to increase or diminish the amount of capital stock, a meeting of the stockholders may be called by a notice signed by at least a majority of the trustees, and published for at least four weeks in some newspaper published in the county where the principal place of business of the company is located, or in some newspaper nearest thereto; which notice shall specify the object of the meeting, the time and place where it is to be held, the amount to which it it is proposed to increase or diminish the capital; and a vote of two-thirds of all the shares of stock shall be necessary to an increase or diminution of the amount of capital stock.

Certificate of proceedings of meeting to increase stock. etc., to be filed in certain offices.

SEC. 22. If at any meeting so called a sufficient number of votes has been given in favor of increasing or diminishing the amount of capital, a certificate of the proceedings showing a compliance with these provisions, the amount of capital actually paid in, the whole amount of the debts and liabilities of the company, and the amount to which the capital stock is to be increased or diminished shall be made out, signed and verified by the affidavit of the chairman and secretary of the meeting, certified by a majority of the trustees and filed as required by the second section of this act, and when so filed, the capital stock of the corporation shall be increased or diminished to the amount specified in the certificate.

Dissolution duties and powers of trustees upon.

SEC. 23. Upon the dissolution of any corporation formed under this act, the trustees, at the time of the dissolution, shall be trustees of the creditors and stockholders of the corporation dissolved, and shall have full power and authority to sue for and recover the debts and property of the corporation, by the name of the trustees of such corporation, collect and pay the outstanding debts, settle all its affairs, and divide among the stockholders the money and other property that shall remain after the payment of the debts and necessary expenses.

Dissolution, proceedings to effect

SEC. 24. Any corporation formed under this act may dissolve and disincorporate itself by presenting to the district judge of the district in which the meetings of the trustees are usually held, a petition to that effect, accompanied by a certificate of its proper officers, and setting forth that at a general or special meeting of the stockholders called for that purpose, it was decided by a vote of two-thirds of all the stockholders to disincorporate and dissolve the corporation. Notice of the application shall then be given by the clerk, which notice shall set forth the nature of the application, and shall specify the time and place at which it is to be heard, and shall be published in some newspaper of the county once a week for four consecutive weeks, or if no newspaper is published in the county, by advertisement posted up for thirty days in three of the most public places in the county. At the time and place appointed, or at any other to which it may be postponed by the judge, he shall proceed to consider the application, and if satisfied that the corporation has taken the necessary preliminary steps, and obtained the necessary vote to dissolve itself, and that all claims against the corporation are discharged, he shall enter an order declaring it dissolved.

There being no officer to call or preside at meetings, how to proceed.

SEC. 25. Whenever, by reason of the death, absence from the county, or other legal impediments of the officers of any corporation, there shall be no person duly authorized to call or preside at a legal meeting thereof; any justice of the peace of the county where such corporation is established may, on the written application of three or more of the members thereof, or of one or more of the trustees named in the articles of incorporation, issue a warrant to either of said members or trustees, directing him to call a meeting of the corporation by giving such notice as is required by law, for the first meeting of trustees, and the justice may in the same warrant direct such person to preside at such meeting until a clerk shall be duly chosen and qualified, if there shall be no other officer present legally authorized to preside thereat.

At such meeting officers may be elected and other business transacted.

SEC. 26. The members of such corporation who shall so assemble, may elect officers to fill all vacancies then existing, and may act upon and transact such other business as might lawfully be transacted at a regular meeting of the corporation, and the regularity or validity of any such meeting or of any action thereof shall not be questioned or inquired into collaterally in any private suit.

APPROVED *January* 12, 1875.

AN ACT

TO EXEMPT THE HOMESTEAD AND OTHER PROPERTY FROM FORCED SALE IN CERTAIN CASES.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Homesteads exempt from forced sale.
2 Liens from which homestead is not exempt.
3. Proceedings when execution has issued against party claiming property as homestead.
4. Rights of surviving husband or wife.

Homestead exempt from forced sale.

SECTION 1. The homestead, consisting of a quantity of land, together with the dwelling house thereon and its appurtenances, not exceeding in value the sum of five thousand dollars, to be selected by the husband and wife, or either of them, or other head of a family, shall not be subject to forced sale in execution, or any final process from any court, for any debt or liability contracted or incurred after the passage of this act. Said selection shall be made by either the husband or wife, or both of them, or other head of a family, declaring their intention, in writing, to claim the same as a homestead; said declaration shall state that they, or either of them are married, or if not married, that he or she is the head of a family; that they or either of them, as the case may be, are at the time of making such declaration residing with their family, or with the person under their care and maintenance on the premises, particularly describing said premises, and that it is their intention to use and claim the same as a homestead; which declaration shall be signed by the party making the same, and acknowledged and recorded as conveyances effecting real estate, are required to be acknowledged and recorded; and from and after the filing for record of said declaration, the husband and wife shall be deemed to hold said homestead as joint tenants.

Liens from which homestead is not exempt.

SEC. 2. Such exemption shall not extend to any mechanics', laborers, or vendors' lien lawfully obtained, nor to any mortgage or other lien, lawfully taken or acquired, to secure the purchase money, for said homestead. No alienation, sale, conveyance, mortgage or other lien, of or upon the homestead property, shall be valid or effectual for any purpose whatever, unless the same be executed by the owner thereof, and be executed and acknowledged by the wife, if the owner be married, and the wife be a resident of this Territory, in the same manner as provided by law in the case of the conveyance by her of her separate and real property. For the purpose of making or creating such alienation, sale, conveyance, mortgage or lien, as aforesaid, it shall not be necessary that the declaration of abandonment of the homestead be executed, as herein provided for, nor that the homestead property be actually abandoned. Said homestead shall be deemed to be abandoned when a declaration thereof, in writing, executed, and acknowledged by the owner thereof, and executed and acknowledged by the wife, if the owner be married, and the wife be a resident of this Territory, in the same manner as required by law in the case of the conveyance by her, of her separate real property, is filed for record in the recorder's office in which the declaration of claim to the same is recorded.

Proceedings when execution has issued against party claiming property as homestead.

SEC. 3. Whenever execution has been issued against the property of a party claiming said property as a homestead and the creditor in such judgment shall make oath before the probate court of the county in which such premises are situated, or before the district court that the cash value of such premises exceeds to the best of the creditor's information and belief, a sum of five thousand dollars; it shall be the duty of such court, upon notice to the debtor, to appoint three disinterested and competent persons as appraisers, to estimate and report, as to the value of such premises, and if the same exceeds such sum, whether they can be divided so as to leave the premises amounting to the homestead exemption, without material injury. If it appear upon such report, to the satisfaction of the court that the premises can be thus divided, it shall order the excess to be sold under the execution. If it appear that the premises cannot be thus divided, and the value thereof exceeds the exemption allowed by this act, he shall order the entire premises to be sold, and out of the proceeds the sum of five thousand dollars to be paid to the defendant in execution, and the excess to be applied to the satisfaction of the execution; *provided*, that no bid shall be received by the officer making the sale under five thousand dollars and *provided further*, that when the execution is against the husband whose wife is living, the court may in its discretion direct the five thousand dollars to be deposited in court to be paid out only upon the joint receipt of the husband and wife, while the said sum is thus deposited, or while it is being drawn and invested in another homestead, it shall possess all the protection against legal process, and the voluntary disposition of the husband as were the original homestead premises.

Rights of surviving husband or wife.

SEC. 4. The homestead and other property exempt from forced sale, of either husband or wife, may be set apart by the probate court, for the benefit of the surviving husband or wife, and his or her legitimate children; and in the event of there being no survivor or legitimate children of either husband or wife, then the property shall be subjected to the payment of their debts; *provided*, that the exemption provided for in this act shall not extend to unmarried persons, except when they have the care and maintenance of minor brothers or sisters, or both, or brothers or sisters minor children, or a father or mother, or both, or grand-parents, or unmarried sisters living in the house with them.

APPROVED *January* 13, 1875.

AN ACT

TO PROVIDE FOR THE FORMATION OF PARTNERSHIPS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Purposes of limited partnerships.
2. Liabilities of general and special partners.
3. To make certificate, what to contain.
4. Must be acknowledged.
5. Copy must be published.
6 Renewals, etc., of partnerships.
7. Names composing firm.
8. Capital not to be withdrawn.
9. Certain transfers void.
10. Assent of creditors to assignment presumed, when.
11. Suits in whose names.
12. When partnership may be dissolved.
13. Liabilities and rights of partners.

Purposes of limited partnerships.

SECTION 1. Limited partnerships for the transaction of mercantile, mechanical, mining or manufacturing business within this Territory, may be formed by two or more persons upon the terms and subject to the conditions and liabilities prescribed in this act, but nothing contained in this act shall authorize such partnerships for the purpose of banking or insurance.

Liabilities of general and special partners.

SEC. 2. The said partnerships may consist of one or more persons who shall be called general partners, who shall jointly and severally be responsible as general partners are by law, and of one or more persons who shall contribute to the common stock a specfiic sum, in actual cash payment as capital, who shall be called special partners, and who shall not personally be liable for any debts of the partnership, except in the cases hereafter mentioned.

To make certificate. What to contain.

SEC. 3 The persons forming such partnership shall make and severally sign a certificate which shall contain the name or firm under which said partnership is to be conducted, the name and respective places of residence of all the general and special partners, the amount of capital which each special partner has contributed to the capital stock, the general nature of the business to be transacted, and the time when the partnership is to commence, and when it is to terminate.

To be acknowledged.

SEC. 4. No such partnership shall be deemed to have been formed until a certificate, made as aforesaid, shall be acknowledged by all the partners before some officer authorized to take acknowledgment of deeds, and recorded in the office of the recorder of the county in which the principal place of business of the partnerships is located, in a book to be kept for that purpose, open to public inspection; and if the partnerships shall have a place of business situated in different counties, a copy of the certificate, certified by the recorder in whose office it shall be so recorded, shall be filed and recorded in like manner in the office of the recorder in every such county. If any false statement shall be made in any such certificate, all the persons interested in the partnership shall be liable as general partners for all the engagements thereof.

To publish copy.

SEC. 5. The partners shall for three successive weeks immediately after such registry, publish a copy of the certificate above mentioned in a newspaper published in the county where the principal place of business is situted; and if no such paper be there printed, then in a newspaper in the Territory nearest thereto; and in case such publication be not so made, the partnership shall be deemed general.

Renewals, &c. of partnerships.

SEC. 6. Upon every renewal or continuation of a limited partnership beyond the time originally agreed upon for its duration, a certificate thereof shall be made, acknowledged, recorded and published in like manner as is provided in this act for the original formation of limited partnerships and every such partnership which shall not be renewed in conformity with the provisions of this section, shall be deemed a general partnership.

Names composing firm.

SEC. 7. The business of the partnership shall be conducted under a firm, in which names of the general partners only shall be inserted, and the general partners only shall transact the business; if the name of any pecial partner be used in said firm with his consent or privity, or if he shall personally make any contract respecting the concerns of the partnership with any person except the general partner he shall be deemed and treated as a general partner.

Capital not to be withdrawn.

SEC. 8. During the continuance of any partnership, under the provisions of this act, no part of the capital stock thereof shall be withdrawn, nor any division of interests, or profits be made so as to reduce such capital stock below the sum stated in the certificate before mentioned. If at any time during the continuance, or at the termination of the partnership, the property or assets shall not be sufficient to pay the partnership debts the special partners shall severally be held responsible for all sums, by them in any way received, withdrawn, or divided, with interest thereon from the time when they were so withdrawn respectively.

Certain transfers void.

SEC. 9. No general assignment by said partnership, in case of insolvency, or where their goods and estate are insufficient for the payment of all their debts, shall be valid unless it provide for a distribution of the partnership property among all the creditors in proportion to the amount of their several claims.

Assent of creditors to assignment presumed, when.

SEC. 10. In case of such assignment, as provided in the preceding section, the assent of the creditors shall be presumed, unless within sixty days after notice thereof, they shall dissent; and no such assignment shall be valid unless notice thereof shall be given in some newspaper printed in the county where the place of business of the party making it is situated; or, if no newspaper be printed in such county, then in some newspaper printed in the Territory nearest thereto, within fourteen days after making such assignment.

Suits, in whose names.

SEC. 11. All suits respecting the business of such partnerships shall be prosecuted by and against the general partnership, except in those cases in which provision is made in this act, that the special partners shall be deemed general partners, and that special partnerships shall be deemed general partnerships, in which cases all the partners deemed general partners may join or be joined in such suits, and excepting also those cases where special partners shall be held severally responsible on account of any sums by them received or withdrawn from the common stock, as before provided.

When partnerships may be dissolved.

SEC. 12. No dissolution of a limited partnership shall take place, except by operation of law, before the time specified in the certificate before mentioned, unless a notice of such dissolution shall be recorded in the recorder's office, in which the original certificate or the certificate of renewal or continuation of the partnership was recorded, and unless such notice shall also be published for three successive weeks in some newspaper in the county where the certificates of the formation of such partnerships were published according to the provisions of this act; and if no newspaper shall, at the time of such dissolution, be printed in such county, then the notice of such dissolution shall be published in some newspaper in the Territory nearest thereto.

Liabilities and rights of partners.

SEC. 13. In all cases not otherwise provided for in this act, the members of limited partnerships shall be subject to all the liabilities, and entitled to all the rights of general partners.

APPROVED, *January* 12, 1875.

AN ACT

DEFINING THE RIGHTS OF HUSBAND AND WIFE.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Separate property of each.
2. Common property.
3. Inventory of the wife's property to be made and recorded.
4. When to be recorded in other counties.
5. Filing of inventory shall be notice. Exemption.
6. The husband to have management and control of wife's property. Sale of wife's property; how perfected.
7. When sale deemed a gift.
8. Mismanagement of husband. Trustee appointed. Bond.
9. Husband to control common property, and gains of separate property. Exception.
10. Dower and tenant by courtesy abolished.
11. Distribution of property upon the death of either party.
12. Dissolution by divorce. Disposition of property.
13. Separate property not liable for debts of the other.
14. This act to govern. Exception.
15. Same.
16. Marriage contracts to be in writing.
17. Marriage contract to be recorded.
18. Record to impart notice.
19. Not valid until recorded.
20. Marriage contract of minor.
21. When may be altered.
22. Limits of marriage contracts.
23. Same.

Separate property of each.

Section 1. All property, both real and personal, of the wife, owned by her before her marriage, and that acquired afterwards by gift, bequest, devise or descent, shall be her separate property; and all property, both real and personal, owned by the husband before marriage and that acquired by him afterwards by gift, bequest, devise or descent shall be separate property.

Common property.

Sec 2. All property acquired after the marriage, by either husband or wife, except such property as may be acquired by gift, bequest, devise or descent, shall be common property.

Inventory of the wife's property to be made and recorded.

Sec. 3. A full and complete inventory of the separate property of the wife shall be made out and signed by the wife acknowledged or proved in the manner required by law for the acknowledgment or proof of a conveyance of land, and recorded in the office of the recorder of the county in which the parties reside.

When to be recorded in other counties.

Sec. 4. If there be included in the inventory any real estate lying in other counties, the inventory shall also be recorded in such counties.

Filing of inventory to be notice

Sec. 5. The filing of the inventory in the recorder's office shall be notice of the title of the wife, and all property belonging to her shall be exempt from seizure or execution for the debts of her husband.

Husband to have management and control of wife's property.

Sec. 6. The husband shall have the management and control of the separate property of the wife, during the continuance of the marriage, but no sale or other alienation of any part of such property can be made, nor any lien or incumbrance created thereon, unless by an instrument in writing, signed by the husband and wife, and acknowledged by her, upon an examination, separate and apart from the husband, before a justice of the supreme court, judge of the district court, probate judge, or notary public, or any other person authorized by law to administer oaths; or, if executed out of the Territory, then so acknowledged before some judge of a court of record, or before a commissioner appointed under the authority of this Territory to take acknowledgment of deeds.

When sale, deemed a gift.

Sec. 7. When any sale shall be made by the wife, of any of her separate property for the benefit of her husband, or where he shall have used the proceeds of said sale, with her consent in writing, it shall be deemed a gift, and neither she nor those claiming under her shall have any right to recover the same.

Mismanagement of husband; trustee appointed; bond.

Sec. 8. If the wife has just cause to apprehend that her husband has mismanaged or wasted, or will mismanage or waste, her separate property, she or any other person in her behalf may apply to the district court for the appointment of a trustee to take charge of and manage her separate estate; such trustee may, for good cause shown, be, from time to time, removed by the court, and another appointed in his place. Before entering upon the discharge of his trust, he shall execute a bond, with sufficient surety or sureties, to be approved by the court, for the performance of his duties. In case of the appointment of a trustee for the wife, he shall account for and pay over to the husband and wife, or either of them, the income and profits of the wife's estate in such manner and proportion as the court may direct.

Husband to control common property and gains of separate property. Exception.

SEC. 9. The husband may have the entire management and control of the common property, with the like absolute power of disposition, as of his own separate estate, and the rents and profits of either husband or wife, shall be deemed common property, unless in the case of the separate property of the wife, it shall be provided by the term of the instrument whereby such property may have been bequeathed, devised or given to her, that the rents and profits thereof shall be applied to her sole and separate use; in which case the entire management and disposal of the rents and profits of such property shall belong to the wife and shall not be liable for the debts of her husband.

Dower and tenant by courtesy abolished.

SEC. 10. No estate shall be allowed to the husband as tenant by courtesy upon the decease of his wife, nor any estate in dower be allowed the wife upon the decease of her husband.

Distribution of property upon the death of either party

SEC. 11. Upon the dissolution of the community, by the death of either husband or wife, one-half of the common property shall go to the survivor, and the other half to the descendants of the deceased husband or wife; the whole, however, subject to the payment of the debts of the deceased. If there be no descendants of the deceased husband or wife, the whole shall go to the survivor, subject to such payment.

Dissolution by divorce; disposition of the property.

SEC. 12. In case of the dissolution of the marriage by decree of any court of competent jurisdiction, the common property shall be equally divided between the parties, and the court granting the degree shall make such order for the division of the common property, or the sale and equal distribution thereof, as the nature of the case may require; *provided*, that where such degree of divorce is rendered on the ground of adultery, or some cruelty, the party found guilty thereof shall only be entitled to such portion of the common property as the court granting the decree, may in its discretion, from the facts of the case, deem just and allow; and such allowance shall be subject to revision on appeal in all respects, including the exercise of discretion of the court below.

Separate property, not liable for debts of the other.

Sec. 13. The separate property of the husband shall not be liable for the debts of the wife contracted before the marriage, but the separate property of the wife shall be and continue liable for all such debts.

This act to govern; exception.

Sec. 14. In every marriage hereafter contracted in this Territory the rights of husband and wife shall be governed by this act, unless there is a marriage contract containing stipulations contrary thereto.

Same.

Sec. 15. The rights of husband and wife married in this Territory prior to the passage of this act, or married out of the Territory, but who shall reside and acquire property herein, shall also be determined by the provisions of this act, with respect to such property as shall be hereafter acquired, unless so far as such provision may be in conflict with the stipulations of any marriage contract.

Marriage contracts to be in writing.

Sec. 16. All marriage contracts shall be in writing and acknowledged or proved in like manner as a conveyance of land is required to be executed or proved.

Marriage contracts to be recorded

Sec. 17. When a marriage contract shall be acknowledged or proved, it shall be recorded in the office of the recorder of every county in which the parties reside, and also in the office of the recorder of every county in which any real estate may be situated, which is conveyed or affected by such marriage contract.

Record to impart notice.

Sec. 18. When any marriage contract is deposited in the recorder's office for record, it shall, as to all property affected thereby, in the county where the same is deposited, impart full notice to all persons of the contents thereof.

Not valid until recorded.

Sec. 19. No marriage contract shall be valid, or affect any property, except between the parties thereto, until it shall be deposited for record with the recorder of the county where the parites reside, and if it relates to real estate in other counties, with the recorder of the county wherein such property is situated.

Marriage contract of minor.

Sec. 20. A minor capable of contracting matrimony may enter into a marriage contract, and the same shall be valid, as if he or she were of full age; *provided*, it be assented to in writing by the person or persons whose consent is necessary to his or her marriage.

To alter.

Sec. 21. A marriage contract may be altered at any time before celebration of the marriage, but not afterwards.

Limits of marriage contract.

SEC. 22. The parties to any marriage contract shall enter into no agreement, the object of which shall be to alter the legal order of descent, either with respect to themselves in what concerns the inheritance of their children or posterity, or with respect to their children between themselves, nor derogate from the rights given by law to the husband, or to the head of the family, or to the surviving husband or wife as the guardian of the children.

Same.

SEC. 23. No stipulation of any marriage contract shall be valid which shall derogate from the rights given by law to the husband over the person of his wife and children or which belongs to the husband as the head of the family, or to the surviving husband or wife as the guardian of the children.

APPROVED, *January* 6, 1875.

AN ACT.

REGULATING DIVORCES.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. District courts to have jurisdiction.
2. Divorces may be granted.
3. Six months' residence of applicant required.
4. Grounds for divorces.
5. For impotence must be commenced in two years by injured party.
6. Legitimacy of children, when not affected.
7. Order for support of wife and children during suit and afterwards.
8. Parties may testify. Proof of facts must be made. Reference.

District courts to have jurisdiction.

SECTION 1. The several district courts of this Territory within their respective districts, shall have exclusive jurisdiction to grant a divorce from the bonds of matrimony.

Divorces may be granted.

SEC. 2. Divorces may be granted from the bonds of matrimony.

Six months' residence of applicant required.

SEC. 3. No person shall be allowed to apply for a divorce, under the provisions of this act, who has not been a resident of this Territory for a period of six months immediately preceding such application.

Grounds for divorces.

SEC. 4. Divorce from the bonds of matrimony may be granted;

First—For natural impotence, existing at the time of marriage;

Second—When the female, at the time of the alleged marriage, was under the age of fourteen years, and the alleged marriage was without the consent of her parents or guardian or other person having the legal custody of her person; and when such marriage was not voluntarily ratified on her part, after she had attained the age of fourteen years;

Third—By an act of adultery by either of the parties. But no divorce shall be granted upon the application of the party guilty of the act of adultery complained of, nor if it shall appear to the court that the adultery complained of was by collusion of the parties; nor when it shall appear that the parties have lived and co-habited together as man and wife after knowledge of the act of adultery complained of;

Fourth—For extreme cruelty in either party, or for habitual intemperance for the period of two years, or for willful desertion by either party for the period of one year, or for willful neglect on the part of the husband to provide for his wife the common necessaries of life—having the ability to provide the same—for the period of two years;

Fifth—When the consent of either of the parties to the marriage was obtained by force or fraud, upon the application of the injured party;

Sixth—In case of the conviction of either party for a felony, after marriage, where the punishment is not less than imprisonment for two years.

For impotence, must be commenced in two years by injured party.

SEC. 5. No action for divorce on the grounds of natural impotency existing at the time of the marriage, shall be allowed, except by the injured party, nor unless instituted within two years after the solemnization of the marriage.

Legitimacy of children, when not affected.

SEC. 6. When a divorce is granted, on the ground of adultery, on the part of the wife, the legitimacy of any children born or begotten of her before the act of adultery complained of, shall not be affected by the divorce.

Order for support of wife and children during suit and afterwards.

SEC. 7. In any action for a divorce, the court may, during the pendency of the action, or at the final hearing or afterwards, make such order for the support of the wife, and the maintenance and education of the children of the marriage as may be just, and may at any time thereafter annually vary or modify such order, as the interest and welfare of the children may require.

Parties may testify.

SEC. 8. Either party shall be allowed to testify; but no divorce shall be granted in any action by default of the defendant, nor in the admission or statement of either party, but in all cases the court shall require additional evidence of the facts alleged as the grounds for a divorce; which proof, if taken before a referee, shall be upon written questions, and free from all legal exceptions as to its competency, admissibility and sufficiency. Nor shall it be lawful for any court to grant a divorce upon the statement or finding of facts by a referee, but only upon the legal testimony taken in the cause. In every action for a divorce the complaint must be verified.

Approved *January* 13, 1875.

AN ACT

REGULATING MARRIAGES.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

Section 1. Marriage defined.
2. Age of consent.
3. Consent, how manifested and proved.
4. Marriage voidable for want of consent.
5. Incestuous and void between certain relatives.
6. When illegal and void. Exceptions.
7. Valid, contracted out of Territory.
8. Requirements of this act.
9. Obtaining license. Requisites for duties of recorder.
10. Who may solemnize marriage.
11. Duty of person solemnizing.
12. Certificate, what to contain.
13. Certificate and license to be filed in the recorder's office. Feet
14. Declaration of marriage
15. Declaration, where there is no record.
16. Acknowledgment and record of declaration. Action to test validity of marriage.
17. The record. Duties of recorder.
18. Penalty for violation of the provisions of this act.

Marriage defined.

Section 1. Marriage is a personal relation arising out of a civil contract, to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage; it must be followed by a solemnization, or by a mutual assumption of marital rights, duties or obligations.

Age of consent.

Sec. 2. Any unmarried male of the age of eighteen years or upwards, and any unmarried female of the age of sixteen or upwards, and not otherwise disqualified, are capable of consenting to and consumating marriage.

Consent, how manifested and proved.

SEC. 3. Consent to and subsequent consummation of marriage may be manifested in any form, and may be proved under the same general rules of evidence as facts in other cases.

Marriage voidable for want of consent.

SEC. 4. If either party to a marriage is incapable of consent, for want of age or understanding; or, from physical causes, of entering into the marriage state; or if such consent is obtained by fraud or force, the marriage is voidable.

Incestuous and void between certain relatives.

SEC. 5. Marriage between parents, ancestors and descendants of any degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces or aunts and nephews, are incestuous and void, from the beginning, whether the relationship is legitimate or illegitimate.

When illegal and void; exceptions.

SEC. 6. A subsequent marriage contracted by any person during the life of a former husband or wife of such person; with any person other than such former husband or wife, is illegal and void from the beginning, unless;

First—The former marriage had been annulled or dissolved; or,

Second—Unless such former husband or wife was absent and not known to such person to be living, for the space of five successive years immediately preceding such marriage, in which case the subsequent marriage is void only from the time its nulity is adjudged by a competent tribunal.

Valid, contracted out of this Territory.

SEC. 7. All marriages contracted without this Territory which would be valid by the laws of the country in which the same were contracted, are valid in this Territory.

Requirements of this act.

SEC. 8. Marriage must be licensed, solemnized, authenticated, and recorded as provided in this act; but non-compliance with its provisions does not invalidate any lawful marriage.

Obtaining license; requisites for.

SEC. 9. All persons about to be joined in marriage must first obtain a license therefor from the county recorder of the county in which the marriage is to be celebrated, showing:

First—The identity of the parties:

Second—Their real and full names, and places of residence;

Third—That they are of sufficient age to be capable of contracting marriage;

Fourth—If the male is under the age of twenty-one, or the female under the age of eighteen years, the consent of the father, mother or guardian, if any such is given; or that such non-aged person has been previously, but is not at the time, married. For the purpose of ascertaining these facts, the county recorder is hereby authorized and empowered to examine parties and witnesses on oath, and receive and read affidavits; the recorder must state such facts in the license, or so many as may be necesaary to inform the person solemnizing the marriage that the recorder was duly satisfied that the parties applying for such license, and making such contract of marriage had a legal right so to do.

Who may solemnize marriage.

SEC. 10. Marriage may be solemnized by either a justice of the supreme court,district,or probate judge; the governor or justice of the peace, priest, or minister of the gospel of any denomination; and no particular form for the ceremony of marriage shall be required; but the parties must declare, in the presence of the person solemnizing the marriage, that they take each other as husband and wife.

Duty of person solemnizing.

SEC. 11. The person solemnizing a marriage must first require the presentation of the marriage license, and satisfy himself that it substantially conforms to section nine of this act, and that the facts set forth in it are true. For this purpose, he may solely rely upon the license or may administer oaths and examine the parties and witnesses in like manner as the county recorder does before issuing the license.

Certificate, what to contain.

SEC. 12. The person solemnizing a marriage must make, sign and inclose upon or attach to the license a certificate showing:

First—That he believes the facts stated to be true, and that, upon due inquiry, there appears to be no legal impediment to the marriage.

Second—The name and place of residence of one or more witnesses to the ceremony;

Third—The fact, time and place of the solemnization of the marriage.

Certificate and license to be filed in the recorder's office.

SEC. 13. He must, at the request of, and for either party, make a certified copy of the license and certificate, and file the originals with the county recorder within thirty days after the marriage; and for such service shall be entitled to receive from the parties married the sum of five dollars; but may receive any other or greater sum voluntarily given by the parties to such marriage.

Declaration of marriage.

SEC. 14. Persons married without the solemnization provided for in section ten, must jointly make a declaration of marriage substantially showing:

First—The names. ages and residence of the parties;
Second—The fact of marriage;
Third—The time of marriage;
Fourth—That the marriage has not been solemnized.

Declaration where there is no record.

SEC. 15. If no record of the solemnization of a marriage is known to exist, the parties may join him in a declaration of such marriage, substantially showing:

First—The names, age and residence of the parties;
Second—The fact of marriage;
Third—That no record of such marriage is known to exist.

Acknowledgment and record of declaration.

SEC. 16. Declarations of marriage must be acknowledged and recorded in like manner as grants of real property. If either party to any marriage denies the same, or refuses to join in a declaration thereof, the other may proceed, by action in the district court, to have the validity of the marriage determined and declared.

The record; duties of recorder.

SEC. 17. The county recorder shall open, and keep a record of the application for licenses to marry—the names of the parties, their residence, and the date of the issuance of such license, and the proof upon which the same was granted; and shall record the certificate of the person solemnizing the marriage, and shall also make a proper index to the names of the parties in reversed columns, with the date of such marriage, and he may charge and receive such fees therefor, as are allowed in other cases for administering oaths, swearing witnesses, taking depositions and affidavits, filing, recording and certifying to the same, which fees shall be paid at the time of obtaining the license.

Penalty for violation of the provisions of this act.

SEC. 18. If the county recorder or any person authorized herein to solemnize marriage or the contracting parties to such marriage shall violate the provisions of this act, they shall be fined in any sum not exceeding one hundred dollars, for each and every offence, which fine shall be paid into the school fund of the county in which such offense has been committed.

APPROVED *January* 12, 1875.

AN ACT.

IN RELATION TO MONEY OF ACCOUNT AND INTEREST.

Be it enacted by the Legislative Assembly of the Territory of Idaho of follows:

SECTION 1. Money of account to be dollar, cent and mill.
2. Accounts in other money not vitiated.
3. Judgments, etc., to be computed in dollars and cents.
4. Interest to be ten per cent. per annum, unless otherwise expressly agreed.
5. Interest shall not exceed two per cent. per month.
6. Compound interest not allowed.
7. Usurious interest paid may be recovered,
8. Penalty for charging usurious interest.

Money of account to be dollar, cent and mill.

SECTION 1. The money of account of this Territory shall be the dollar, cent and mill; and all accounts in the public offices and other public accounts, and all proceedings in courts, shall be kept and had in conformity to this regulation.

Accounts in other money not vitiated.

SEC. 2. Nothing contained in the preceding section shall vitiate or affect any account, charge or entry originally made on any note, bond or other instrument expressed in any other money of account; but the same shall be reduced to dollars and parts of dollars, as heretofore directed, in any suit thereupon.

Judgments, etc., to be computed in dollars and cents.

SEC. 3. In all judgments and decrees rendered by any court of justice for any debt, damages or costs, and in all executions issued thereon, the amount shall be computed as near as may be in dollars and cents, rejecting small fractions; and no judgment in other proceedings shall be considered erroneous for such omission.

Interest to be ten per cent per annum, unless otherwise expressly agreed.

SEC. 4. When there is no express contract in writing, fixing a different rate of interest, interest shall be allowed at the rate of ten per cent. per annum for all moneys after they become due, on any bond, bill or promissory note, or other instrument of writing, or any judgment recorded before any court in this Territory for money lent, for money due on settlement of account from the day on which the balance is ascertained, and for money recorded to the use of another.

Interest may not exceed two per cent. per month.

SEC. 5. Parties may agree in writing for the payment of any rate of interest, on money due or to become due on any contract, not to exceed the sum of two per cent. per month. Any judgment rendered on such contract shall bear interest at the rate of ten per cent. per annum until satisfied.

Compound interest not allowed.

SEC. 6. No person or corporation, in computing interest on any bond, bill, promissory note or any other instrument in writing, shall add the interest, or any portion thereof due, to the principal, and compute interest thereon as part of the principal, thereby charging compound interest.

Usurious interest paid may be recovered.

SEC. 7. Every person who, for any such loan or forbearance, shall pay or deliver any greater sum or value than is above allowed to be received, may recover, in an action against the person who shall have taken or received the same, or his personal representative treble the amount of money so paid, or value delivered, above the rate aforesaid, if such action be brought within one year after such payment or delivery.

Penalty for charging usurious interest.

SEC. 8. Any person who shall directly or indirectly receive any greater interest, discount or consideration than is prescribed in this act, and in violation of the provisions or this act, shall be deemed guilty of a misdemeanor and on conviction thereof, the person so offending shall be punished by fine not exceeding one hundred dollars or imprisonment not exceeding six months, or by both such fine and imprisonment.

APPROVED *January* 12, 1875.

AN ACT

RELATING TO BONDS, DUE BILLS, ETC.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Effect of bonds, due bills and non-negotiable instruments.
2. To be assignable by endorsement.
3. Assignee may maintain action thereon.
4. Liability of assignee.
5. Defendant may plead want of consideration in suit by assignee.
6. Fraud or circumvention may be pleaded by defendant.
7. Tenders of chattels where to be made.
8. A legal tender of chattels to discharge obligor.

Effect of bonds, due bills and non-negotiable instruments.

SECTION 1. That all bonds and due bills, and other instruments of writing not negotiable, hereafter made by any person, body politic or corporate, whereby such person promises or agrees to pay any sum or sums of money, or articles of personal property, or acknowledges any sum of money, or articles of personal property, to be due to any other person, shall be taken to be due and payable, and the sum of money or articles of personal property therein mentioned, shall by virtue thereof be due and payable to the person to whom the bond, bill or other instrument in writing is made.

To be assignable by endorsement.

SEC. 2. Any such bond, due bill or other instrument in writing not negotiable, made payable to any person, shall be assignable by endorsement thereon, under the hand of such person and of his assignee, in the same manner as bills of exchange are, so as absolutely to transfer and vest the property thereof in each and every assignee successively.

Assignee may maintain action thereon.

SEC. 3. Any assignee to whom such sum of money or personal property is, by such endorsement, made payable, or in the case of the death of such assignee, his heirs, executors and administrators may, in his name, institute and maintain the same kind of action for the recovery thereof, against the person who made and executed such bond, bill or other instrument in writing, or against his heirs, executors, or administrators, as might have been maintained against him by the obligee or payee, in the case the same had not been assigned; and in every such action in which judgment shall be given for the plaintiff, he shall recover his damages and costs of suit as in other cases; *provided*, that the maker or obligor shall be allowed to set up in defence to the action of an assignee any matter which he might have set up to the action of the payee or obligee, where the same has arisen previous to notice of the assignment.

Liability of assignor.

SEC. 4. Every assignor, his heirs, executors, or administrators, of every such note, bond, bill or other instrument in writing, shall be liable to the action of the assignee thereof, his executors, or administrators, if such assignee shall have used diligence, by the institution and prosecution of a suit against the maker of such note, bill, or other instrument in writing, or against his heirs, executors, or administrators, for recovery of the money or property thereon, or damages in lieu thereof; *provided*, that if the institution of such suit would have been unavailing, or that the maker had absconded or left the Territory or State where such assigned note, bond, bill or other instrument in writing, became due, or within twenty days thereafter, such assignee, his heirs, executors, or administrators, may recover against the assignor, or his heirs, executors, or administrators, as if due diligence by suit had been used. By "due diligence," shall be understood the institution of suit within sixty days after the maturity of the obligation.

Defendant may plead want of consideration in suit by assignee.

SEC. 5. In any action which may hereafter be commenced in any court in this Territory upon any of the instruments in writing mentioned in this act by the obligee or payee thereof, if any of such instruments were made or entered into without a good or valid consideration, or if the consideration upon which any such instrument was made or entered into has wholly or in part failed, it shall be lawful for the defendant, against whom such action shall have been commenced by his obligee or payee, to plead to such want of consideration, or that the consideration has wholly or in part failed; and if it shall appear that any of the aforesaid instruments were made and entered into without a good and valid consideration, or that the consideration has wholly failed, the verdict shall be for the defendant; and if it shall appear that the consideration has failed in part, the plaintiff shall recover in accordance with the equity of the case.

Fraud or circumvention may be pleaded by defendant.

SEC. 6. If any fraud or circumvention be used in obtaining the making or executing of any of the instruments aforesaid, such fraud or circumvention may be pleaded in bar to any action to be brought on any such instrument so obtained, whether such action be brought by the party committing any such fraud or circumvention, or any assignee of such instrument.

Tender of chattels, where to be made.

SEC. 7. In all cases where any of the before mentioned instruments of writing are for the payment or delivery of personal property, other than money, and no particular place be specified in such instrument of writing for the payment or delivery thereof, it shall be lawful for the maker of any such instrument of writing to tender, or cause to be tendered, on the day mentioned in such instrument,the personal property therein mentioned, at the place where the obligee or payee of any such instrument resided at the time of the execution thereof; *provided*, however, that such property be too ponderous to be easily moved, or if the obligee or payee of such instrument had not, at the time of the execution of such instrument of writing, a known place of residence in the county where the maker resided, then it shall be lawful to tender such personal property at the place where the maker of such instrument resided at the time of execution thereof. Any tender made in pursuance of this section, shall be equally valid and legal, in case any such instrument of writing shall have been assigned in pursuance of the first section of this act, as if no such assignment had been made.

A legal tender of chattels to discharge liability of obligor.

SEC. 8. A legal tender of any such personal property shall discharge the maker of any such instrument from all liability thereon; and the property thus tendered is here declared to be vested in, and belong to the legal owner and holder of any such instrument of writing, and he may maintain an action for the recovery thereof, or for damages, if the possession be subsequently illegally withheld from him; *provided*, however, if any such property so tendered, shall be of a perishable nature, or shall require feeding or other sustentation, and the person owning or holding any such instrument of writing be absent at the time of tendering the same, it shall be lawful for every person making such tender to preserve, feed, or otherwise take care of the same; and he shall have a lien on such tendered property, for his reasonable trouble and expense of preserving, feeding, or sustaining such property, until payment be made for such trouble and expense.

APPROVED *January* 12, 1875.

AN ACT

RELATIVE TO BILLS OF EXCHANGE AND PROMISSORY NOTES.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. All notes made negotiable.
2. Same, when signed by agent.
3. "Person" construed.
4. Who may maintain action.
5. Payable to maker or fictitious person.
6. Acceptance must be in writing.
7. Not finding, if on other paper, exception.
8. When promise to accept, is an acceptance.
9. Acceptance to be written on the bill.
10. Limitations upon last four sections.
11. When bill is deemed to be accepted.
12. Rate of damage on protest. Pacific States. Atlantic States. Pacific British Possessions. Foreign countries.
13. Damages, in lieu of what. Interest.
14. Amount ascertained without reference to rates of exchange.
15. When rate of exchange considered.
16. Same rate of damage for non-acceptance.
17. Holder only entitled to damages.
18. Notice of protest sent by mail, where addressed.
19 Bills heretofore drawn, accepted.
20. Certain days considered as Sunday, days of grace.

All notes made negotiable.

SECTION 1. All notes in writing, made and signed by any person, whereby he shall promise to pay to any other person, or to his order, or to the order of any other person, or unto the bearer, any sum of money therein mentioned, shall be due and payable as therein expressed, and shall have the same effect and shall be negotiable in like manner as inland bills of exchange, according to the custom of merchants.

Same, when signed by agent.

SEC. 2. Every such note, signed by the agent of any person under a general or special authority, shall bind such person, and shall have the same effect and be negotiable as above provided.

"Person" construed.

SEC. 3. The word "person" in the last preceding sections shall be construed to extend to every corporation capable by law of making contracts.

Who may maintain action.

SEC. 4. The payees and endorsers of every such note, payable to them at their order, and the holders of every such note payable to bearer, may maintain action for the sums of money therein mentioned, against the makers and endorsers thereof respectively in like manner as in cases of inland bills of exchange, and not otherwise.

Payable to maker or fictitious person.

SEC. 5. Such notes made payable to the maker thereof, or to the order of a fictitious person, shall, if negotiated by the maker have the same effect and be of the same validity as against the maker, and all persons having knowledge of the facts, as if payable to bearer.

Acceptance must be in writing.

SEC. 6. No person within this Territory shall be charged as an acceptor on a bill of exchange, unless his acceptance shall be in writing, and signed by himself or his lawful agent.

Not binding if on other paper; exception.

SEC. 7. If such acceptance be written on paper other than the bill, it shall not bind the acceptor, except in favor of a person to whom such acceptance shall have been shown, and who, on the faith thereof, shall have received the bill for a valuable consideration.

When promise to accept is an acceptance.

SEC. 8. An unconditional promise in writing to accept a bill before it is drawn, shall be deemed an actual acceptance in favor of any person who, upon the faith thereof, shall have received the bill for a valid consideration.

Acceptance to be written on the bill.

SEC. 9. Every holder of a bill, presenting the same for acceptance, may require that the acceptance be written on the bill; a refusal to comply with such request shall be deemed a refusal to accept, and the bill may be protested for non-acceptance.

Limitation upon last four sections.

SEC. 10. The last four sections shall not be construed to impair the right of any person to whom a promise to accept a bill may have been made, and who, on the faith of such promise, shall have drawn or negotiated the bill, to recover damages of the parties making such promise, on his refusal to accept such bill.

When bill is deemed to be accepted.

SEC. 11. Every person upon whom a bill of exchange is drawn, and to whom the same is delivered for acceptance, who shall destroy such bill, or who shall refuse, within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, shall be deemed to have accepted the same.

Rate of damage on protest.

SEC. 12. The rate of damage to be allowed and paid upon the usual protest for non-payment or non-acceptance of bills of exchange, drawn or negotiated within this Territory, shall be as follows:

First—If such bills shall have been drawn upon any person or persons, corporation, company or companies, in any of the States or Territories west of the Rocky Mountains, including Utah and Montana, twenty per cent. or twenty dollars on the hundred, upon the principal sum specified in such bill;

Second—If such bill shall have been drawn upon any person or persons, corporation or corporations, company or companies, in any part or place, in any of the United States, east of the Rocky Mountains, usually known as the Atlantic States, twenty-five per cent., or twenty-five dollars upon the hundred, upon the principal sum specified in the bill;

Third—If upon any person or persons, corporation or corporations, company or companies, in any part or place of the British Possessions in North America, west of the Rocky Mountains, including Vancouver's Island, twenty-five per cent., or twenty-five dollars upon the hundred, upon the principal sum specified in the bill;

Fourth—If such bill shall have been drawn upon any person or persons, corporation or corporations, company or companies, in any part or place of Europe, or in any foreign country except the aforesaid British Possessions, thirty per cent., or thirty dollars upon the hundred, upon the principal sum specified in such bill.

Damages, in lieu of what.

SEC. 13. Such damages shall be in lieu of interest, charges of protest, and all other charges incurred previous to and at the time of giving notice of non-payment; but the holder of such bill shall be entitled to demand and recover lawful interest upon the aggregate amount of the principal sum specified in such bill, and of the damages thereon, from the time at which notice of protest for non-payment shall have been given, and payment of such principal sum shall have been demanded.

Amount ascertained without any referen to rates of exchange.

SEC. 14. If the contents of such bill be expressed in money of account of the United States, the amount due thereon, and of the damages herein allowed for the non-payment thereof, shall be ascertained and determined without any reference to the rates of exchange existing between the Territory and the place in which such bill shall have been drawn, at the time of demand, or of a notice of non-payment.

When rate of exchange considered.

SEC. 15. If the contents of such bill be expressed in money of account or currency of any foreign country, then the amount due, exclusive of the damages payable thereon, shall be ascertained and determined by the rate of exchange or the value of such foreign currency at the time of the demand of payment.

Same rate of damage for non-acceptance.

SEC. 16. When a bill of exchange shall be protested for non-acceptance, the same rate of damages shall be allowed the protest for non-acceptance, as provided in the last four sections, and shall be in lieu of interest, charges of protest, and all other charges incurred previovs to and at the time of giving notice of non-acceptance; but the holder shall be entitled to recover interest upon the aggregate amount of the principal sum specified in the bill, and of the damages thereon, from the time at which notice of protest for non-acceptance shall have been given.

Holder only entitled to damages.

SEC. 17. The damages allowed by this act shall be recovered only by the holder of the bill, who shall have purchased the same, or some interest therein, for a valuable consideration.

Notice of protest sent by mail; where addressed.

SEC. 18. In all cases where notice of non-acceptance of a bill of exchange, promissory notes, or other negotiable instruments may be given by sending the same by mail, it shall be sufficient, if such notice be directed to the city or town where the person sought to be charged by such notice resides at the time of drawing, making or endorsing such bill of exchange, promissory note, or other negotiable instrument, unless such person, at the time of affixing his signature to such bill, note, or other negotiable instrument, shall in addition thereto, specify thereon the post office to which he may require the notice to be addressed.

Bills heretofore drawn, excepted.

SEC. 19. Nothing in this act shall apply to bills of exchange, promissory notes or other negotiable instruments made or drawn before this act takes effect.

Certain days considered as Sunday.

SEC. 20. The following days, namely, the first day of January, the fourth day of July, and the twenty-fifth day of December, shall, for all purposes whatever, as regards the presentation for payment or acceptance, and for the protesting and giving notice of the dishonor of bills of exchange, checks and promissory notes, made after the passage of this act, be treated and considered as is the first day of the week, usually called Sunday. Three days, commonly called days of grace, shall be allowed, except on sight bills, or drafts,; and any one of the holidays specified in this act, coming within the three days of grace, shall be counted as one of such days.

APPROVED *January* 12, 1875.

AN ACT.

PROVIDING FOR THE ISSUING AND REDEMPTION OF NEW BONDS, TO BE INTERCHANGEABLE FOR THE BONDS OF THE TERRITORY OF IDAHO, ISSUED UNDER THE PROVISIONS OF ACTS OF THE LEGISLATIVE ASSEMBLY, APPROVED RESPECTIVELY JANUARY 12TH 1866, AND JANUARY 14TH, 1867, FOR THE SALE AND NEGOTIATION OF SUCH NEW BONDS IN CERTAIN CASES, AND FOR THE REPEAL OF THE ACTS ABOVE MENTIONED.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. The territorial treasurer shall, prior to the first day of December, A. D., 1875, notify each and every holder of the bonds of the Territory of Idaho, issued under and by virtue of two acts of the Legislative Assembly of said Territory, approved respectively January 12th, 1866, and January 14th, 1867, or their agents, that, on the said first day of December, A. D., 1875, and for and during the period of six months next thereafter, at his office in Boise City, in said Territory, he will, in exchange for the bonds issued as aforesaid, due or not due, issue to such stockholder or holders, new bonds bearing date, the day of their delivery, payable at the office of the territorial treasurer, on the first day of December, A. D., 1885, in United States coin, with interest at the rate of ten per centum, payable in United States coin semi-annually, on the first day of June and December in each year, upon the presentation and surrender of interest coupons, as hereinafter provided, which said exchange shall be made dollar for dollar, including interest due and unpaid upon the first mentioned bonds at the time of such exchange; *provided*, that in case the interest on any such bonds shall have been paid up to the first of December, 1875, the treasurer shall give in exchange a new bond equal in amount to the face of the old bond, and shall make the interest on the new bond commence on the said first day of December, 1875.

SEC. 2. The territorial treasurer shall cause the new bonds, provided for in the foregoing section, before being issued for the purpose aforesaid, or for the purpose hereinafter mentioned, to be signed by the governor of the Territory of Idaho, and countersigned by the secretary of said Territory, who shall affix thereto the seal of said Territory, and shall be endorsed on the back thereof by the territorial comptroller, and the said new bonds shall be in the following form—namely:

UNITED STATES OF AMERICA,
TERRITORY OF IDAHO.

TEN PER CENT. COIN BOND OF THE TERRITORY OF IDAHO.

The Territory of Idaho hereby acknowledges that said Territory owes and agrees to pay to the bearer of this bond the sum of———dollars in United States coin, at the office of the territorial treasurer, at Boise City, in said Territory, on the first day of December, A. D., 1885, with interest thereon at the rate of ten per centum per annum, payable semi-annually, on the first day of June and December in each year, at the office of said territorial treasurer, in United States coin, upon the presentation and surrender of the proper interest coupons, hereto attached, until the principal of this bond shall have been paid; and the faith of said Territory is hereby pledged for the payment of the principal and interest of this bond, and, for which purpose the necessary taxes shall be levied and collected.

This bond is one of a series of similar bonds issued under and by virtue of an act of the Legislative Assembly of said Territory approved———18.—————

In witness whereof, the governor of said Territory has hereunto set his hand, and the secretary of said Territory has countersigned the same, and affixed thereto the seal of said Territory at Boise City, this——day of ———187—.

.....................Secretary of Idaho.

.....................Governor of Idaho.

Sec. 3. Coupons for the interest on said new bonds shall be attached to each bond so that the same can be removed without injury to the bond, and such coupons shall be consecutively numbered from one to twenty, and shall show on their face the time of payment and the amount to be paid on each of them, and they shall be signed by the territorial treasurer.

Sec. 4. It shall be the duty of the territorial treasurer and the territorial comptroller,each to keep a record of each and every bond issued hereunder, showing the date, amount, and number of such bond and the person to whom issued, and also a record of each and every bond taken up in exchange as above provided, showing the number and amount of such bond, and the date of such exchange.

Sec. 5. Upon the presentation and surrender of any bond issued under, and by virtue of either of the acts aforesaid, for exchange, as provided for in this act, it shall be the duty of the territorial treasurer to compute the amount of principal and interest at that time due on said bond and endorse the same on the back thereof, and after he shall have made a record of such bond, as in section four of this act provided, he shall deliver the same to the territorial comptroller, who shall make a record thereof as in said section provided; and shall, on the back of said bond, write the word "cancelled," together with the date of said cancellation, and file the same in his office; and thereupon the territorial treasurer shall issue to the person so presenting and surrendering any such bond, as in this section provided, a new bond of equal amount with the bond so surrendered, and shall also fill up and sign the coupons as in section three of this act provided, and shall, after procuring the signature of the governor, and the counter signature of the secretary, togther with the territorial seal thereon, present the same to the territorial coemptroller, which latter officer shall make a record of the same as herein before provided, and shall deliver the bond so executed to the person entitled thereto.

SEC. 6. After the expiration of six months from the first day of December, A. D., 1875, if there shall be any of the said old bonds, issued under the act aforesaid, still outstanding and not surrendered for exchange, as in this act provided, it shall be the duty of the territorial treasurer, and he is hereby authorized and empowered, to negotiate and sell for cash at a discount of not more than ten per cent. from par value, a sufficient amount of said new bonds, as authorized in this act, to redeem and pay the principal and interest of such old, outstanding and unexchanged bonds.

SEC. 7. In case the territorial treasurer shall make such negotiations and sale, in whole or in part, as in the foregoing section provided, he shall immediately thereafter notify the holder or holders of such outstanding old bond or bonds, that he is ready to receive sealed proposals for the surrender of such bonds, not exceeding in amount the amount of the proceeds of the sale or sales of the new bonds, made as aforesaid by the treasurer.

SEC. 8. After the expiration of thirty days from the giving of such notice, the territorial treasurer and territorial comptroller shall open such sealed proposals and accept the lowest bid or bids for the surrender of such old bonds; *provided*, that no bid for more than par value shall be accepted, and that the lowest bidder shall be deemed to be those who offer the largest amount of bonds at par value for the smallest amount of money.

SEC. 9. When any bid or bids are accepted as in the foregoing section provided, the territorial treasurer shall redeem the bond or bonds mentioned in the bid or bids accepted, by paying to the holder or holders thereof the sums mentioned in such bid or bids, and shall receive the surrender of such bond or bonds, and he shall make a record of such surrendered bond or bonds, as herein before provided, and shall then deliver the same to the territorial comptroller, who shall make a record thereof and cancel the same as above provided for exchanged bonds.

SEC. 10. Before the territorial treasurer shall deliver any bond or bonds, negotiated or sold, as in this act provided, he shall, after procuring the names of the governor and secretary, with the territorial seal, as in section five of this act provided, in case of new bonds to be exchanged, present the same to the territorial comptroller, who shall make a record thereof, and endorse the same as in case of interchangeable bonds, and the treasurer shall, from the date of such record, be chargeable with such bond or bonds, to be accounted for by the proceeds of the sale thereof, or in a return to and cancellation of such bond or bonds by the comptroller.

Sec. 11. For the prompt payment of the interest of the bonds issued under and by virtue of this act, there shall be and is hereby, from and after the first day of December, A. D., 1875, and until the final redemption of such bonds, annually set apart and appropriated from monies in the territorial treasury an amount sufficient to pay promptly the semi-annual interest on such bonds; and such sum, so set apart and appropriated, shall be applied by the territorial treasurer exclusively to the payment of such interest on the presentation, and surrender of the coupons as aforesaid.

Sec. 12. From and after the first day of December, A. D., 1880, the legislative assembly of Idaho Territory, shall by law provide for the setting apart of an annual sum from monies in the territorial treasury sufficient to meet the payment of the principal of said bonds at their maturity.

Sec. 13. There shall be and is hereby appropriated and set apart from the monies paid into the territorial treasury for the fiscal year beginning December 1st, 1874, a sum sufficient to pay the unpaid interest coupons of all the bonds issued under and by virtue of the acts of January 12th, 1866, and January 14th, 1867, up to December 1st, 1875.

Sec. 14. That an act approved January 12th, 1866, entitled an act to provide for funding the indebtedness of the Territory of Idaho, and an act approved January 14th, 1867, entitled "an act for funding the indebtedness of the general fund of the treasury of Idaho Territory, and all claims thereon accruing from and after December 1st, 1865, and to authorize the issuance of territorial bonds therefor," be and are hereby each and both repealed.

Sec. 15. That the sum of five hundred dollars, or so much thereof as may be necessary for the purpose, is hereby appropriated out of any monies in the territorial treasury not otherwise appropriated, for the payment of the expense that may be incurred in the preparation of the new bonds, provided for in this act, and for such other expenses in the premises as may be unavoidable in the execution of the provisions of this act.

Sec. 16. Whenever in this act it is required of the territorial treasurer to give any notice to the holder or holders of bonds, he may do so in writing, in case he knows the place of residence of such holder or holders, or he may do so by publication in some newspaper of this Territory, in case he has no knowledge of such residence.

SEC. 17. This act shall be in force and effect from and after its approval by the governor.

APPROVED *January* 8, 1875.

AN ACT

CONCERNING CHATTEL MORTGAGES.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Upon what and how made.
3. Must be recorded. In transitu, must be recorded.
3. This act to be complied with, unless the possession is in the mortgage.
4. Right of redemption.
5. Attachment of mortgaged property; proceedings thereon. Attachment of mortgagee's interest.
6. Mining claims, rights of the mortgagee.
7. Time allowed to record in.

SECTION 1. Chattel mortgages may be made on all property, goods or chattels, not defined by statute to be real estate; no mortgage made by virtue of this act shall have any legal force or effect (except between the parties thereto) unless the residence of the mortgagor or mortgagee, the sum to be secured and the rate of interest to be paid, when and where payable, shall be set out in the mortgage, and the mortgagor shall make affidavit that the mortgage is *bona fide* and made without any design to defraud and delay creditors, which affidavit shall be attached to such mortgage.

Upon what and how made

SEC. 2. All mortgages made in pursuance of this act with the affidavit attached shall be recorded in the

Must be recorded.

county where the mortgagor lives and also in the county where the property is located; *provided*, that property *in transitu* from the possession of the mortgagee to the county in which the mortgagor resides, or to a location for use during a reasonable time for such transportation, shall be considered as located; it shall be the duty of the county recorders of this Territory to provide proper books of record and of indexes, and record all mortgages made in pursuance of the provisions of this act, in the same manner as they are required by the law to record deeds and mortgages on real estate.

This act to be complied with, unless the possession is in the mortgagee.

SEC. 3. No chattel mortgages shall be valid, except between the parties, unless the same shall have been made, executed and recorded in conformity with the provisions of this act; *provided*, however, if the mortgagee receives and retains actual possession of the property mortgaged, he may omit the recording of his mortgage during the continuance of such actual possession.

Right of redemption.

SEC. 4. A right of redemption shall remain in the mortgagor until the same shall have been foreclosed by due process of law, or by agreement between the parties to the mortgage, which agreement shall be entered on the record of the mortgage.

Attachment of mortgaged property; proceedings thereon.

SEC. 5. All property mortgaged in pursuance of the provisions of this act may be attached at the suit of the creditors of the mortgagor, such creditor shall pay or tender to the mortgagee the actual payment due him on such mortgage before the officer making such attachment shall be entitled to the actual possession of such property, when the property thus situated and thus redeemed shall have been sold by the officer, by virtue of due legal proceedings, out of the proceeds of the sale, he shall,

First—Pay to the creditor the amount advanced by him to pay the mortgage, with legal interest thereon;

Second—Pay all legal costs and fees appertaining to the judgment, execution and sale;

Third—Pay the judgment creditor the amount of the judgment, and any remaining surplus pay to the judgment debtor. If the creditor of the mortgagor prefers, he may cause to be attached the right of redemption of the said mortgagor, and cause the same to be sold subject to the rights of the mortgage, such attachment shall be made by leaving a copy of the writ of attachment, with notice of the attachment, with the mortgagee, when a sale of such equity is made on execution, obtained by such attaching creditor, the sum realized shall be applied to the payment of costs, fees, discharge of the execution, and any remainder, paid to the judgment debtor. When the interest of the mortgagee shall be attached, a copy of the writ of attachment shall be left with the mortgagor, with notice of attachment. Any payment made by him to the mortgagee, after such notice, shall not release the attachment or affect the rights of the attaching creditor, but such mortgagor may pay the amount due on said mortgage to the officer who made the attachment, and thereupon said officer shall release said attachment and hold the money so paid him in the same manner as if he had originally attached money.

Mining claims; rights of the mortgagees.

SEC. 6. This act shall not be so construed as to interfere or conflict with the lawful mining rules, regulations or customs in regard to the locating, holding or forfeiture of mining claims; but in all cases of mortgages of mining interests under this act, the mortgagee shall have the right to perform the same acts that the mortgagor might have performed for the purpose of preventing a forfeiture of the same under the said rules, regulations or customs, and shall be allowed such compensation therefor as shall be deemed just and equitable by the court, ordering the sale upon a foreclosure; *provided*, that such compensation shall in no case exceed the amount realized from the claim by a foreclosure and sale.

Time allowed to record in.

SEC. 7. The mortgagee in all mortgages made under this act shall be allowed one day for every twenty miles of the distance between his residence and the county recorder's office, where such mortgage ought by law to be recorded, to conform to the provisions of this act, before any attachment shall be valid, made by the creditors of the mortgagor.

APPROVED *January* 12, 1875.

AN ACT.

IN RELATION TO SOLE TRADERS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. A married woman may become a sole trader.
2. What person must do to become sole trader.
3. Must file petition, what to set forth in.
4. May invest in business, from what source and amount.
5. Creditor may oppose; grounds of opposition, etc.
6. Time of hearing proof of notice; court must find facts.
7. Court to render judgment on facts; what to authorize.
8. Must make and file affidavit with the clerk of court; form of.
9. Judgment of court and affidavit to be recorded.
10. Sole trader, liability of.
11. Husband not liable for debts contracted.

A married woman may become sole trader.

SECTION 1. A married woman may become a sole trader by the judgment of the probate court of the county in which she has resided for six months next preceding the application.

What person must do to become sole trader.

SEC. 2. A person intending to make application to become a sole trader must publish notice of such intention in a newspaper published in the county, or, if there be none, then in a newspaper published in an adjoining county, for four succcessive weeks. The notice must specify the term and the day upon which application will be made, the nature and place of the business proposed to be conducted by her, and the name of her husband.

Must file petition, what to set forth in.

SEC. 3. Ten days prior to the day named in the notice, the applicant must file a verified petition, setting forth;

First—That the application is made in good faith, to enable the applicant to support herself, and others dependent upon her, giving their names and relation;

Second—The fact of insufficient support from her husband and the causes thereof, if known;

Third—Any other grounds for application which are good causes for a divorce with the reason why a divorce is not sought; and,

Fourth—The nature of the business proposed to be conducted, and the capital to be invested therein, if any, and the sources from which it is derived.

May invest in business, from what source and amount.

SEC. 4. The applicant may invest in the business proposed to be conducted, a sum derived from the community property or of the separate property of the husband, not exceeding five hundred dollars.

Creditor may oppose; grounds of opposition, etc,

SEC. 5. Any creditor of the husband may oppose the application, by filing in the court (prior to the day named in the notice) a written opposition verified, containing either;

First—A specific denial of the truth of any material allegation of the petition, or setting forth;

Second—That the application is made for the purpose of defrauding the opponent; or,

Third—That the application is made to prevent, or will prevent, him from collecting his debt.

Time of hearing, proof of notice; court must find facts.

SEC. 6. On the day named in the notice, or on such other day to which the hearing may be postponed by the court, the applicant must make proof of the publication of the notice herein before required, and the issues of fact joined, if any, must be tried as in other cases; if no issues are joined, the court must hear the proof of the applicant, and find the facts in accordance therewith.

Court to render judgment; what to authorize.

SEC. 7. If the facts found sustain the petition, the court must render judgment, authorizing the applicant to carry on, in her own name and on her own account, the business specified in the notice and petition.

Must make and file affidavit with clerk of court; form of.

SEC. 8. The sole trader must make and file with the clerk of the court an affidavit, in the following form;

"I, A. B., do, in presence of Almighty God, solemnly swear that this application was made in good faith, for the purpose of enabling me to support myself (and any dependant, such as husband, parent, sister, child, or the like, naming them, if any), and not with any view to defraud, delay or hinder any creditor or creditors of my husband; and that of the moneys so to be used by me in business, not over five hundred dollars have come, either directly or indirectly, from my husband, so help me God."

A certified copy of the decree, with this oath enclosed thereon, must be recorded in the office of the recorder of the county where the business is to be carried on, in a book to be kept for that purpose.

Judgment, etc., to be recorded.

SEC. 9. When the judgment is made and entered, and a copy thereof with the affidavit, provided for in the previous section, duly recorded, the person therein named is entitled to carry on the business specified in her own name, and the property, revenues, moneys and credits so by her invested and the profits thereof, belong exclusively to her, and are not liable for any debts of her husband; and she thereafter has all the privileges of and is liable to all legal processes provided for debtors and creditors, and may sue and be sued alone, without being joined with her husband.

Sole trader, liability of.

SEC. 10. A married woman who is adjudged a sole trader is responsible and liable for the maintainance of her minor children.

Husband not liable for debts contracted.

SEC. 11. The husband of a sole trader is not liable for any debt contracted by her in the course of her sole traders' business, unless contracted upon his written consent.

APPROVED *January* 15, 1875.

AN ACT

TO PREVENT OFFICERS DEALING IN CERTAIN SECURITIES.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

Certain officers not to deal in warrants, etc,

SECTION 1. The territorial treasurer and auditor and, the several county, city or town corporation officers in this Territory, are hereby expressly prohibited from purchasing or selling, or in any manner receiving to their own use or benefit, or to the use and benefit of any person or persons, whatever, any Territory, county or city or town warrants, scrip, orders, demands, claim or claims, or other evidence of indebtedness against the Territory, or any county, or city, or town thereof.

Ib.

SEC. 2. The territorial treasurer and auditor, and all county, city, or town corporation officers, are prohibited from purchasing or being interested, or receiving, or selling, or transferring, or causing to be purchased, received, sold or transferred, either in person, or by, or through the agency or means of any person or persons whatever, any interest, claim, demand, or other evidence of indebtedness, against the Territory, or any county, or city, or town corporation thereof, either directly or indirectly; nor shall any clerk or employee of any such officer, or officers, nor the commissioners employed or to be employed to fund any county, city or town corporation indebtedness, be allowed to make any such purchase, sale or transfer, or bargain, in any manner for any territory, county, city or town corporation indebtedness, demands, or other evidence of indebtedness, against the Territory or any county, city or town corporation thereof.

Warrants purchased by officers not to be redeemed

SEC. 3. It shall be the duty of the territorial treasurer and the several county, city, or town corporation treasurers, of the Territory, to refuse to redeem any warrants against the Territory, or any county, city or town corporation thereof, whenever it shall come to their knowledge that such warrants, scrip or other evidence of indebtedness has been purchased, sold, received or transferred in violation of the provisions of this act.

May sell certain warrants.

SEC. 4. All public officers herein referred to, shall have the right to sell or transfer any evidence of public indebtedness which may be issued according to law and held by such officers for services by them to the Territory, county, city or town corporation, legally and justly due; and this act shall not be deemed to prevent the purchase, sale and transfer of any funded public indebtedness whatever of the Territory or of any county, city or town corporation.

Violations of this act to be complained of.

SEC. 5. It shall be the duty of any officer charged with the disbursement of any public moneys, or any evidence of public indebtedness, when he shall be informed by affidavit of the violation of any of the provisions of this act, by any officer whose account is to be settled, audited or paid by him, to withhold any settlement or payment of the same, and to cause said officer to be prosecuted for a felony; and on conviction any officer guilty of any violation of the provisions of this act, shall be punished by a fine of not less than five hundred dollars, and shall be imprisoned in the territorial prison for a term of not less than two months; such conviction shall operate as a forfeiture of office, and the party convicted shall forever be disqualified from holding any office of trust or profit in the Territory. Any person giving information which may lead to the conviction of any person under the provisions of this act, shall be entitled to one-half of any fine assessed upon and collected from any such officer.

APPROVED, *January* 12, 1875.

AN ACT

TO PROTECT CERTAIN GAME IN IDAHO TERRITORY.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Killing of quails and partridges prohibited.
2. Wild ducks not to be killed, when.
3, Prairie chickens or grouse,
4. Unlawful to sell certain game, when.
5. Penalty for violating act.
6. Money collected for fines, how applied.

SECTION 1. It shall not be lawful for any person or persons hereafter, within the Territory of Idaho, to willfully kill or destroy any quail or partridge, or trap or carry away the same, or destroy their eggs, prior to the first day of September, A. D., 1877; and after the first day of March, A. D., 1877, it shall not be lawful for any person or persons to kill or destroy quail or partridge, or trap or carry away the same, or destroy their eggs, at any time between the first day of April and the first day of September, of each year. Killing of quails and partridges prohibited.

SEC. 2. It shall not be lawful for any person or persons, hereafter, to kill or destroy, willfully, any species of wild duck at any time between the fifteenth day of April and the first day of September, of each year. Wild ducks not to be killed, when.

SEC. 3. It shall not be lawful for any person or persons to willfully kill or destroy any prairie chicken or grouse, at any time between the first day of March, and the first day of August, of each year. Prairie chicken or grouse.

SEC. 4. It shall not be lawful, hereafter, for any person or persons to hawk, vend or sell, or offer for sale, any quail, partridge, grouse or prairie chicken or duck, Unlawful to sell certain game, when in any city, town or county in this Territory, at any time between the first day of March and the first day of September, in each year; *provided*, that the provisions of sections two, three and four, of this act, shall apply to and be in force alone in Ada county.

Penalty for violating this act.

SEC. 5. Any person or persons violating any of the provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined the sum of not less than ten nor more than twenty dollars, and imprisoned in the county jail not less than one day nor more than thirty days. And any person who shall know of such offense having been committed, and neglect or refuse to inform the proper authorities, shall be liable to a fine of not more than ten dollars.

Moneys collected fines; how applied.

SEC. 6. All moneys collected under this act shall be paid to the justice, who shall first pay the costs of the proceedings, and the remaining portion, to the school fund of the county where the offense has been committed.

APPROVED, *January* 12, 1875.

FOR THE PROTECTION OF FISH.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

Certain obstructions declared nuisances.

SECTION 1. Any wier, dam, fence or stop net, or other obstruction to the run of any fish, in any bay, strait, river, stream, creek, or slough, of this Territory, contrary to the provisions of this act, is hereby declared to be a public nuisance. All officers of justice are hereby required to remove, break down and destroy the same.

Penalty for obstructing

SEC 2. Any person who may erect, or in any manner, directly or indirectly, aid in the erection of any wier or other obstruction aforesaid to the passage of fish in any bay, strait, river, stream, creek or slough, of this Territory, shall be deemed guilty of a misdemeanor and be fined in any justices court in any sum not less than twenty-five dollars, nor more than one hundred dollars, or confined in the county jail not less than ten days nor more than thirty days, or both such fine and imprisonment; *provided*, that no person shall be prohibited by this act from erecting a dam, weir or fence one-half the width of any bay, strait, creek or slough in this Territory.

Penalty for using giant powder, etc.

SEC. 3. Any person using giant powder, nitro-glycerine, or other explosive or poisonous material for the purpose of destroying fish, shall, upon conviction, be considered guilty of a misdemeanor, and subject to all the fines and penalties prescribed for placing obstructions.

Duties of justices of the peace.

SEC. 4. Any justice of the peace, upon complaint being made under oath to the existence of any such obstructions, shall immediately issue an order to any constable, to enquire into and report upon the facts.

Penalty of false return by officer.

SEC. 5. Any officer found guilty of making a false return in relation to the facts upon which he is directed to report, shall be considered a party to the misdemeanor, and be liable to the payment of the fines herein imposed.

Disposition of fines.

SEC. 6. The fines imposed by the provisions of this act, shall first be applied to the payment of the costs of the prosecution, and the balance shall be paid by the justice, into the county treasury of the county where process is issued, to the use of the school fund of the county.

Qualification of act.

SEC. 7. The provisions in this act shall in no way interfere with or apply to any dam erected for mill, mining or agricultural purposes.

APPROVED *January* 12, 1875.

TO REGULATE THE CATCHING OF FISH IN THE COUNTIES OF ONEIDA AND BEAR LAKE IN THIS TERRITORY.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

Section 1. That it shall be unlawful for any person or persons, for the period of five years from the passage of this act, to take fish from the waters, stream or streams, in the counties of Oneida and Bear Lake in this Territory, with the seine, spear, traps of any kind, or by the use of nitro glycerine or giant powder, or in any other manner, than with hook and line.

Sec. 2. Any person or persons violating the provisions of section one of this act, shall be guilty of a misdemeanor and on conviction thereof before any court of competent jurisdiction, shall be fined in any sum not less than ten nor more than one hundred dollars, or be imprisoned in the county jail of the county where such offense was committed, for any term not exceeding six months, or by both such fine and imprisonment, and justices of the peace shall have jurisdiction in any case arising from the violation of the provisions of this act.

Sec. 3. All fines for the violation of the provisions of this act, shall be paid one-half to the complaining witness, and the remaining one-half into the county treasury of the county in which the offense was committed, for the use of the school fund.

Sec. 4. This act to take effect and be in force from and after its passage.

Approved *January* 13, 1875.

AUTHORIZING THE GOVERNOR TO APPOINT COMMISSIONERS OF DEEDS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

Governor to appoint.

SECTION 1. The governor may, when in his judgment it may be necessary, appoint in each of the United States, and in each of the Territories and districts of the United States, and in each foreign State, Territory colony and kingdom, one or more commissioners, to continue in office four years, unless sooner removed by the governor, who shall have power to administer oaths, and to take deposition and affidavits to be used in this Territory, and also to take the acknowledgments or proofs of deeds, or other instruments, to be recorded in this Territory.

Powers of commissioners.

SEC. 2. All oaths administered by said commissioners, all depositions and affidavits taken by them, and all acknowledgments and proofs aforesaid, certified by them and under their seal as such commissioners, shall have the the same force and effect in law,to all intents and purposes, as if done and certified by any recorder or other officer within this Territory, who is now or may hereafter be authorized by law, to perform such acts.

To take oath of office.

SEC. 3. Before any commissioner appointed aforesaid, shall enter upon the duties of such office, he shall take and subscribe an oath, as prescribed by the United States, before some officer authorized to administer oaths, at the place where such commissioners may be appointed, that he will faithfully perform and discharge all the duties of his office; which oath shall be transmitted and filed in the office of the Secretary of the Territory of Idaho within six months after taking the same.

Duties of secretary.

SEC. 4. It is hereby made the duty of the Secretary of the Territory of Idaho to furnish each commissioner as appointed with a copy of this act.

Fees of secretary.

SEC. 5. The Secretary of the Territory shall be entitled to receive a fee of five dollars for issuing each commission under the provisions of this act to be paid by the party applying therefor.

APPROVED *January* 12, 1875.

ADOPTING THE COMMON LAW OF ENGLAND.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

Common law of England adopted.

SECTION 1. The common law of England so far as the same is not inconsistent with the provisions of the constitution and laws of the United States, the organic act and laws of this Territory be the law of the land in this Territory.

APPROVED *January* 12, 1875.

AN ACT

CONCERNING ROADS, HIGHWAYS, TRAILS, AND PUBLIC THOROUGHFARES.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. What considered public highways.
2. County to be districted. Supervisors appointed.
3. Supervisors to be notified; give bond; by whom approved; where filed.
4. Duties of supervisors.
5. Gravel or dirt taken; damages therefor, etc.
6. Levy of road tax; collection expenditure; account of; work in lieu of.
7. Letting of contracts.
8. Laying out of new roads; manner of proceeding.
9. Delinquent tax, enforcing collection thereof.
10. Work how paid for; wages; quarterly account of supervisor; approval by the board; road fund; deficit, how paid.
11. Obstructing road, etc., a misdemeanor; punishment.
12. Injuring bridge, etc.; punishment.
13. Liability of party for overflowing, etc.
14. Boise county exempt from this act.

What considered highways.

SECTION 1. All roads and trails, streets and thoroughfares, shall be considered as public highways, which are, or have been used, as such, at any time within two years prior to the passage of this act, or which may hereafter be declared as such by the board of county commissioners within their respective counties; *provided*, that in case any such public highway is now closed, the same shall not be opened without an order of the board of county commissioners. All roads or highways laid out or now traveled in the various counties in the Territory of Idaho are hereby declared public highways;

excepting such roads and highways upon which franchises have heretofore been and which franchise may now be in full force and effect.

County to be districted; supervisors appointed.

SEC. 2. It shall be lawful, whenever the public interests require it, for the board of county commissioners of each county to divide their respective counties into a suitable number of districts, and appoint a supervisor of roads for each district.

Supervisor to be notified.

SEC. 3. The county clerk of each county shall notify all persons who have been appointed road supervisors, within ten days after such appointment has been made, informing them of such appointment, and describing the boundaries of their respective districts; each road supervisor shall give a bond in such sum as the commissioners shall designate, with at least two sufficient sureties for the faithful performance of his duties, and the accounting for all moneys that may come into his hands, with a justification of the sureties as required in other official bonds, and to be approved, either by the board of commissioners or county auditor, and filed in the recorders office, upon which shall be endorsed the usual oath of office. Road snpervisors shall hold their office subject to the board of commissioners, who may remove them at any time.

Duties of supervisors.

SEC. 4. The road supervisors shall cause all highways within their respective districts to be kept clear from obstructions, and in good repair, causing banks to be graded, bridges and causeways to be made when the same may be necessary, to keep the same in good repair, and to rebuild them when destroyed.

Gravel or dirt taken, damages therefor, etc.

SEC. 5. The road supervisor shall have power to make use of any gravel or dirt for improving the roads which may be absolutely necessary, from any adjacent lands, and the board of county commissioners may allow such damages, if there be any, to the owners of such lands, as they may deem just; *provided*, that said commissioners shall be liable to pay damages to the county, at the suit of any citizen, if it should be proved that they have allowed extraordinary and extravagant damages.

Levy of road tax; collection; expenditure; account of; work in lieu of.

SEC. 6. If, in the opinion of a majority of the board of county commissioners of any county, it is necessary, the board shall levy, at any regular meeting, and cause to be collected, a road tax from all able-bodied men in each district, between the ages of twenty-one and fifty years, of not less than two nor more than six dollars, the said tax to be collected by the road supervisors of their respective districts; and the auditor of the county shall furnish each road supervisor with blank receipts for the said road tax; and the road supervisor shall spend the money collected by him in the construction or improvement of the highways and roads; and shall take receipts for all moneys expended by him, and settle with the auditor quarterly, and make a full exhibit of the expenditures made by him. The commissioners shall, in lieu of said tax to be paid in money, designate the amount of work or days' labor that may be performed; *provided*, there shall at least be one days' work of ten hours required, and not more than three days; and if any person liable for said tax will perform, or cause to be performed, under the directions of the road supervisor, the three days' labor required by the commissioners, it shall be in full satisfaction of said tax.

Letting of contracts.

SEC. 7. Whenever any contract for the improvement of roads, trails, streets or thoroughfares is to be made, advertisement thereof shall be given by the supervisor of the district in which such improvement is to be made, by posting written notices in two of the most public places of his district, and by advertisement in one newspaper of the county, or, if none be published in the county, by notice posted on the court house door, at least ten days prior to the letting of such contracts, and all contracts shall be awarded to the lowest responsible bidder, subject to the approval of the board of commissioners; *provided*, that the supervisor shall have power to make contracts for the improvement of roads, which shall not exceed the sum of fifty dollars, at their option, such contracts to be approved by the board of commissioners.

Laying out of new roads, manner of proceeding.

SEC. 8. The board of commissioners of each county on presentation of petitions, praying for a county road, trail or thoroughfare, to be laid out within the county, or praying for such road, trail, thoroughfare, or highway, to be laid out from the dwelling or plantation of any person, to any public road, or from one public road to another, and designating the points therein, shall cause notice to be given to the parties owning the land over which such road is to be located, and if objection by one or more of the owners shall be made, the board of commissioners shall consider and determine the same at their next regular meeting, and if they shall be of the opinion that such road, trail, street or thoroughfare is necessary, they shall appoint two persons as viewers, who shall view out and locate such road, trail, street or thoroughfare, and, upon a return of the certificate of the viewers, shall declare the same to be a public highway; when absolutely necessary, the county surveyor may be called on by the commissioners to assist in said location.

Delinquent tax, enforcing collection thereof.

SEC. 9. If, after demand made by the supervisors, either verbally or in writing, for the payment of said road tax, a person liable to pay said road tax, refuses or neglects for three days, either to pay said tax in money, or to perform the days' work required, then the said person shall be considered delinquent, and the supervisor shall proceed to levy upon and sell at public auction, to the highest bidder, after giving public notice, as required by this law, on sales under execution, and the property of such delinquent, or so much thereof as shall be necessary to satisfy such delinquent's road tax and cost of making such sale; and the supervisor shall be entitled to the same costs as a constable in making sales under execution; and for collecting each road tax and giving a receipt, the supervisor shall be entitled to a fee to be regulated by the board of county commissioners, which fee shall not be less than twenty-five cents, or more than fifty cents.

Work, how paid for; wages.

SEC. 10. The road supervisor may hire persons to work the roads, to be paid out of the moneys he collects, or may work himself thereon; provided the county commissioners of each county shall fix the amount to be allowed for a full day's work, which shall not be more than five dollars per day, for each full day's work of ten hours; and, *provided further*, the road supervisors shall be allowed no day except for services when actually employed himself in working upon the roads; and *provided further*, that each road supervisor shall make quarterly a full and complete report of all his acts to the board of commissioners, the amount of money collected and paid out by him, to whom, and for what paid, accompanied by receipts of the same; the number of days' work performed, the number of days he himself has been employed in working on the roads, what roads have been constructed and repaired, etc., which report shall be sworn to as correct; and at the same time he shall furnish a bill for his own individual work, and the road supervisor shall not use or pay himself for his own services out of the moneys collected by him until the board of commissioners shall have examined and approved of his accounts, and shall also examine and approve of his report; and the road supervisor shall be liable on his official bond for all amounts of his accounts and expenditures that the board does not approve of; and if, after all amounts that shall be allowed and approved of by the board are paid, there shall be any money left in the road supervisor's hands, he shall pay the same to the county treasurer, which shall be placed in a separate fund, to be called the road fund, which shall be subject to the board of commissioners, and be expended by them, for the benefit of the roads, bridges and highways, as they may deem expedient. The road supervisor shall account to the auditor for all blank road tax receipts, delivered to him, and upon his removal or resignation from office, shall deliver to the auditor all unused receipts, and shall be liable for all receipts he cannot account for; *provided further*, that if the road supervisor does not collect sufficient moneys to pay for such services, as shall be allowed and approved by the board, the deficit shall be allowed by the board as any other county charge, and a warrant for the same be drawn on the usual fund, the amount per day to be fixed by the commissioners.

Obstructing road, etc., a misdemeanor; punishment.

SEC. 11. If any person shall obstruct any public road, trail, street or thoroughfare, by felling trees across the same, or by placing any other obstructions therein, or damaging, digging or deepening a creek or river, or its banks so as to destroy a ford or crossing, fence up or obstruct any such highways, having been notified of the same by any person or persons aggrieved, or who shall, within ten days after such notice, fail or refuse to remove any such obstructions, shall be deemed guilty of a misdemeanor, and, upon conviction, before any competent jurisdiction, shall be fined in a sum not less than twenty-five dollars, nor more than one hundred dollars, and be adjudged to pay all costs of prosecution.

Injuring bridges, etc., punishment.

SEC. 12. If any person shall willfully destroy or injure any bridge or causeway, or remove or cause to be removed any of the plank or timber therefrom, or cut down or injure any tree planted or growing as a shade tree, in any public highway, street, or thoroughfare, or by digging in it, he shall be liable to be prosecuted, before any justice of the peace, by any commissioner of the county in behalf of said county, and, on conviction thereof, shall be fined in a sum not to exceed one hundred dollars.

Liability of party for overflowing road, etc.

SEC. 13. If any person, mining ditch, or milling company, shall, by virtue of any charter or law, granted or made for mining, milling, irrigating or other purposes, dam the waters of any stream in this Territory, so that the water thus dammed shall overflow any wagon or other road, situated on the margin or banks of said stream, or so as to cause the road to become undermined, weakened, or damaged, the said person, company or corporation shall rebuild the same or pay the whole costs and expenses of having the same done.

Boise county exempt from this act.

SEC. 14. The county of Boise is exempted from the provisions of this act, so far as it conflicts with the act entitled "An act concerning roads and highways in Boise county," approved January 10th, 1873, said county special act for Boise county still remaining in full force and effect.

APPROVED *January* 12, 1875.

AN ACT

RELATIVE TO ELECTIONS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1 Persons entitled to vote.
2. Persons disqualified to vote.
3. Time of holding general elections.
4. Eligibility to office.
5. Duty of county commissioners.
6. Judges and clerks, duties of.
7. Forms of notice to be given.
8. Duty of sheriff.
9. Judges and clerks to take an oath.
10. How oath to be administered.
11. Poll open, how long.
12. Clerk to furnish poll books.
13. Manner of voting.
14. Name of elector.
15. When elector may vote.
16. Challenged votes.
17. Ballot box.
18. Examination of ballot box.
19 Adjournments.
20. Ballot box to be sealed.
21. Box not to be opened.
22. Canvassing votes.
23. Compare poll list; corrections.
24. Purging the list.
25. Duties of clerks; form of certificates.
26. Duties of judges.
27. Breaking seal of poll book, penalty.
28. Board of county commissioners to act as a board of canvassers in their respective counties, and to issue certificate.
29. Returns and canvassing the same.
30. Returns to be forwarded to secretary of Territory.
31. Resignations, vacancies, etc.

32. In case of joint councilmen or representatives how returns to be made canvassed and certified.
33. Compensation of judges and clerks.
34. Violation of act, penalty.
35. When term of office begins.
36. Who and when deemed elected.
37. Abbreviations; misspelling.
38. Contesting election, manner of,
39. Probate court to try.
40. Construction of act.
41, Resignations.
42. Vacancies.
43. Same.
44. Supplying vacancies.
45. When certain officers may be appointed.
46. Officers to qualify.
47. What act repealed.

Persons entitled to vote.

SECTION 1. That all male inhabitants over the age of twenty-one years, shall be entitled to vote at any election for delegate to Congress, and for territorial, district, county, and precinct officers; *provided*, they shall be citizens of the United States, and shall have resided in the Territory four months and in the county thirty days where they offer to vote, next preceding the day of election. All persons having the qualifications of an elector shall be eligible to any district, county, or precinct office, except otherwise provided by law.

Persons disqualified to vote.

SEC. 2. No person under guardianship, *non compos mentis*, or insane, nor any person convicted of treason, felony, or bribery in this Territory, or in any other Territory, or State in the Union, unless restored to civil rights, shall be permitted to vote at any election.

Time of general elections.

SEC. 3. A general election shall be held in the several election precincts in this Territory, on the Tuesday following the first Monday of November Anno Domini eighteen hundred and seventy-six and thereafter biennially on the Tuesday next following the first Monday in November, and all elective territorial, county and precinct officers shall hereafter be elected at the times herein specified, unless otherwise provided by legislation subsequent hereto.

Eligibility to office.

SEC. 4. No person shall be eligible to the office of delegate to Congress, to a seat as member of the council, or house of representatives, or any territorial office, unless he has been a resident of the Territory one year prior to the time of election.

Duty of county commissioners.

SEC. 5. It shall be the duty of the county commissioners, at their regular session in July preceding the general election, to appoint three capable and discreet persons possessing the qualifications of electors, to act as judges of election at each election precinct, and said commissioners shall also set off and establish election precincts, or districts, when it may be necessary, and the clerk of said board of commissioners shall make out and deliver to the sheriff of the county, immediately after the appointment of such judges, a notice thereof in writing, directed to the judges so appointed; and it shall be the duty of the said sheriff, within twenty days of the receipt of said notice, to serve the same upon each of the said judges of election. If in any precinct any of such judges do not serve, the voters of said precinct may elect a judge or judges to fill the vacancy on the morning of the election, to serve at such election.

Judges and clerks, duties of.

SEC. 6. The said judges shall choose two persons, having similar qualifications with themselves, to act as clerks of the election. The said judges shall be and continue judges of all elections of civil officers, to be held in their respective precincts until other judges shall be appointed as hereinbefore directed, and the said clerks of election may continue to act as such during the pleasure of the judges of election, and the county commissioners shall from time to time fill all vacancies which may occur in the office of judges of election, at any election precinct within their respective counties.

Forms of notice to be given.

SEC. 7. The clerks of the several boards of county commissioners, shall at least twenty days before any general election, and at least ten days before any special election, make out and deliver to the sheriff of his county, or to the justice of the peace of any county attached for judicial purposes, three written notices thereof for each election precinct, the said notices to be as nearly as circumstances will admit as follows:

"Notice is hereby given, that on the Tuesday following the first Monday of November next, at the house of ———, in the county of———, an election will be held for territorial, county, town, or district and precinct officers (naming the offices to be filled as the case may be), which election will be open at eight o'clock in the morning and will continue until eight o'clock in the evening of the same day.

Dated this——day of———A. D. 18——(as the case may be.)

[Signed]

Clerk of the board of county commissioners."

Duty of sheriff.

SEC. 8. The sheriff aforesaid, to whom such notices shall be delivered as aforesaid, shall cause to be put up, in three of the most public places of each election precinct, the notices referring to such election precinct, at least ten days previous to the time of holding any general election, and at least seven days previous to the time of holding any special election, and in cases where towns and precincts may be set off by law as election precincts, said notices shall be posted as follows: one at the house where the election is authorized to be held, and the others at two of the most public and suitable places in that vicinity or settlement.

Judges and clerks to an oath.

SEC. 9. Previous to votes being taken, the judges and clerks of election shall severally take the following oath:

> "I, A B, do solemnly swear or affirm (as the case may be) that I will perform the duties of judge of the election (or clerk as the case may be) according to law and the best of my ability; that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same,"

How oath to be administered.

SEC. 10. In case there shall be no judge or justice of the peace present at the opening of the election, or in case such judge or justice shall be appointed judge or clerk of election, it shall be lawful for the judges of election, and they are hereby empowered to administer the oath to each other and to the clerks of the election, and the person administering the oaths shall cause an entry thereof to be made and subscribed by him, and prefixed to the poll book.

Poll open, how long.

SEC. 11. At all elections to be held under this act, the polls shall be opened at the hour of eight o'clock, in the forenoon, and continue open until eight o'clock in the evening of the same day, at which time the polls shall be closed; and, upon opening the polls, one of the clerks, under the direction of the judges, shall make proclamation of the same, and thirty minutes before closing the polls, proclamation shall be made in like manner, and the polls shall be closed in half an hour thereafter.

Clerk to furnish poll books.

SEC. 12. It shall be the duty of the clerks of the several boards of county commissioners to furnish the sheriff with two poll books, who shall deliver the same to one of the judges of every election precinct in the county at least five days before the time of holding any election.

Manner of voting.

SEC. 13. Every elector shall, in full view, deliver to one of the judges of election a single ballot or piece of paper, on which shall be written or printed, the names of the person voted for, with a pertinent designation of the office he or they may be intended to fill, said ballot may be open or folded as the voter may choose.

Name of elector.

SEC. 14. The judge to whom any ticket may be delivered, shall upon the receipt thereof, pronounce with an audible voice, the name of the elector, and, if no objection be made to him, and if the judge shall be satisfied that the elector is legally entitled to vote, he shall immediately put the ballot in the box, without inspecting the names thereon, if it be a folded ballot, and the clerks of the election shall enter the name of the elector and number in the poll book.

When elector may vote.

SEC. 15. It shall be lawful for any elector to vote for delegate to Congress, at any place of holding elections within this Territory, for members of the Legislative Assembly, and all other officers at any place of holding elections within the particular limits for which such members of the Legislative Assembly, and such other officers, are to be elected; *provided*, that an elector qualified to vote for part and not all of the officers to be chosen at any election, shall vote an open ticket that the judges may determine the legality of such vote.

Challenged votes.

SEC. 16. If any person offering to vote shall be challenged, as unqualified, by any judge or clerk of the election, or by any other person entitled to vote at the same poll, and either judge shall challenge any person offering to vote whom he shall know or suspect not to be qualified; when any person who offers his vote shall be challenged, one of the judges shall declare to the person so challenged the qualifications of an elector; if such shall then declare himself duly qualified, and the challenge be not withdrawn, one of the judges shall then tender him the following oath:

> "You do solemnly swear or affirm, that you are a citizen of the United States, of the age of twenty-one years, that you have resided in this Territory for four months and in this county for thirty days last past, and have not previously voted at this election."

Provided, that when a person is entitled to vote only for a part of the officers voted for at such election, the oath shall be varied accordingly, and the clerks shall enter the names of all persons on the poll lists, who are challenged and sworn, in brackets, and such evidence shall be presumptive evidence of such votes, and if any person shall refuse to take the oath so tendered, his vote shall be rejected; *and provided further*, that no volunteer in the service of the United States shall be allowed to vote at any election in this Territory.

Ballot box.

SEC. 17. There shall be provided and kept by the judges of each election precinct, (at the expense of the county) a suitable ballot box with a lock and key.

SEC. 18. There shall be an opening in the lid of such box of no larger size than shall be sufficient to admit a single folded ballot. Before opening the polls the ballot box shall be carefully examined by the judges of the election that nothing may remain therein; it shall then be locked and the key thereof delivered to one of the judges to be designated by the board, and shall not be opened during the election, except in the manner and for the purposes hereinafter mentioned.

Adjournments.

SEC. 19. At each adjournment of the polls, the clerks shall, in the presence of the judges, compare their respective poll lists, compute and set down the number of votes, and correct all mistakes that may be discovered, according to the decision of the board, until such poll lists shall be made in all respects to correspond.

Ballot box to be sealed.

SEC. 20. The ballot box shall then be opened and the poll books placed therein, and such box shall then be locked and a covering with a seal placed on the opening in the lid of such box, so as to entirely cover the same, and the key delivered to one of the judges and the box to another, to be designated by the board.

Box not to be opened.

SEC. 21. The judge having the key shall keep it in his own possession, and deliver it again to the board at the next opening of the polls; and the person having the box shall carefully keep it without opening it or suffering it to be opened, or the seal thereof to be broken or removed, and shall publicly, in that condition, deliver it to the board of judges at the next opening of the polls, when the seal shall be broken, the box opened, the poll books taken out, and the box again locked.

CANVASSING BY THE JUDGES.

Canvassing votes.

SEC. 22. As soon as the polls of the election shall be finally closed, the judges shall immediately proceed to canvass the vote given at such election, and the canvass shall be public and continue without adjournment until completed.

Compare poll lists: corrections.

SEC. 23. The canvass shall commence by a comparison of the poll lists from the commencement, and a correction of any mistake that may be found therein, until they shall be found to agree; the box shall then be opened and the ballots found therein counted by the judges, unopened, except to ascertain whether each ballot is single; and if two or more ballots shall be found so folded together as to present the appearance of a single ballot, they shall be laid aside until the count of the ballots is completed; and if, on a comparison of the count with the poll list and the appearance of such ballots, a majority of the judges shall be of the opinion that the ballots thus folded together were voted by one elector, they shall be rejected.

Purging the list.

SEC. 24. If the ballots in the box shall be found to exceed in number the whole number of votes on the poll lists, they shall be replaced in the box (after being purged after the manner above stated) and thoroughly mingled, and one of the judges, after being blind folded, shall publicly draw out and destroy therefrom so many ballots unopened as shall be equal to such excess.

Duties ot clerks; form of certificates.

SEC. 25. The ballots and poll lists agreeing, or being made to agree, the board shall then proceed to count and ascertain the number of votes cast, and the clerks shall set down in their poll books the names of every person voted for, and then at full length the office for which such person received such votes, and the number he did receive; the number being expressed at full length, such entry to be made as early as circumstances will permit, in the following form, to-wit:

At an election held at the house of A. B, in the town (district or precinct) of———, in the county of———, and in the Territory of Idaho, on the——day of———, A. D.——, the following named persons received the number of votes annexed to their respective names, for the following described offices, to-wit: A. B. had—— votes for delegate to Congress; I. J. had——votes for member of Legislative Council; K. L. had——votes for member of House of Representative (and in like manner for any other person voted for).

Certified by us;
M. N.
O. P. } Judges of election.
Q. R.

Attest:
S. T.
U. V. } Clerks of election.

Duties of judges.

SEC. 26. The judges of election shall then enclose and seal one of the poll books under cover, directed to the clerk of the board of commissioners of the county in which such election was held, and the package thus sealed shall be conveyed by one of the judges or clerks of the election, to be determined by lot, if they cannot otherwise agree, or by some other person, to be agreed upon by the judges, and delivered to the said clerk of the board of county commissioners, at his office, within ten days; *provided*, that in the county of Shoshone, five additional days be allowed for delivering the poll books, inclusive of the day of election, and the other poll book, together with the ballots, shall be, by said judges, placed in the ballot box and by them sealed up, and then deposited with one of said judges; to be decided by lot, if they cannot otherwise agree, and the said poll books and ballots shall be kept with the seal unbroken for at least eight months, unless the same shall be required as evidence in a court of law, in any case arising under the election laws of this Territory, and then only when the said judge, having said ballot box in charge shall be served with subpœna, requiring him to produce the same in court, as evidence in any such before mentioned case, when the same may be opened, under the direction of said court.

Breaking seal of poll book; penalty.

SEC. 27. If any person, after being deputed by the judges of election to carry the poll book of such election to the clerk of the county, shall fail or neglect to deliver such poll book to the said clerk within the time prescribed by law, safe, with the seal unbroken, he shall for every such offense, and when convicted thereof, forfeit and pay the sum of five hundred dollars, and be imprisoned in the county jail until such fine is paid, for the use of the county; the same to be recovered by a civil action in the name of the county commissioners, in the district court of the proper county.

Board of countycommissioners to act as a board of canvassers in their respective counties, and to issue certificate.

SEC. 28. The board of commissioners in the several counties of this Territory, shall act as a board of canvassers in accordance with the provisions of the election law, and shall on the tenth day after any general or special election, or sooner if all the returns be received, and all the commissioners are present, proceed publicly at their office, to open the returns and make up abstracts of the votes cast at said election. The abstract of votes for delegate to Congress, shall be on one sheet. The abstract of votes for members of the Territorial Council and Assembly shall be on one sheet, and the abstract of votes for district officers shall be on one sheet, and the abstract of votes for county and precinct officers shall be on one sheet, and shall declare the results of the election held in their respective counties and cause a certificate of election to be given by their clerk to any person or persons elected to a county or precinct office within their county; and shall certify to each of said abstracts or copies thereof as directed and provided in the general election law; *provided*, that when a tie shall exist between two or more persons for the Council or House of Representatives, or for any county or precinct office, the clerk of the board of commissioners shall give notice to the sheriff of the county, who shall immediately advertise another election, giving at least ten days notice; and it shall be the duty of the clerk of the board of commissioners of such county, on the receipt of the returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of election may be entitled for their services and lay the same before the county commissioners at their next session, and the board of commissioners shall order the compensation aforesaid to be paid out of the county treasury.

Returns and canvassing the same.

SEC. 29. The clerk of the board of county commissioners immediately after making out the abstract of the votes given in his county, shall make out a copy of each of said abstracts, and transmit it by mail, express, or special messenger to the secretary of the Territory, at the seat of government; and it shall be the duty of the secretary of the Territory, with the marshal of the Territory or his deputy, in the presence of the governor, to proceed within thirty days after the election and sooner if the returns be all received, to canvass the votes given for delegate to Congress and district officers, and the governor shall grant a certificate of election to the person having the highest number of votes for the respective offices, and shall also issue a proclamation declaring the election of such persons. In case there shall be no choice, by reason of any two or more persons having and equal and the highest number of votes, the governor shall, by proclamation, order a new election.

Returns to be forwarded to secretary of Territory.

SEC. 30. If the returns of the election of any county in this Territory shall not be received at the office of the secretary of the Territory within thirty days after the election, the said secretary may forthwith send a messenger to the clerk of the board of county commissioners, whose duty it shall be to furnish the said messenger with a copy of such returns, and the said messenger shall be paid out of the county treasury of the said county the sum of thirty cents for each mile he shall necessarily travel in going to and returning from the said county.

Resignation, vacancies, etc.

SEC. 31. Any person who shall receive a certificate of election shall be at liberty to resign such office, though he may not have entered upon its duties or taken the requisite oath of office; and when any vacancy shall happen in the office of member of the Council or House of Representatives, by death, resignation, or otherwise, and a session of the Legislature is to take place before the next annual election, the governor shall issue a writ of election, directed to the sheriff of the county, or district in which such vacancy shall happen, commanding him to notify the several judges in his county or district to hold a special election to fill such vacancy or vacancies, at a time appointed by the governor.

In case of joint councilmen or representatives how returns to be made canvassed and certified.

SEC. 32. When two or more counties are united in one council or representative district, or for the election of any officer, the clerks of the boards of county commissioners of their respective counties so joined, shall, at the time of canvassing the votes of an election, proceed to canvass the vote of joint councilmen or representatives, or both, or any other officer; and shall immediately thereafter transmit each to the other county a certified abstract of all the votes cast in their county for such joint councilman and representative, or other officer; and the person having the highest number of votes for the respective offices shall be declared duly elected, and shall receive a certificate of election from the recorder of the county first organized. In case that either of the counties so joined have not a board of county commissioners, then, in that case, the judges of election shall immediately, after they shall have canvassed the votes, as in this act provided, seal up one set of the poll books, retaining the boxes with the ballots, as herein provided, and immediately transmit such poll books to the clerk of the board of county commissioners of the county to which they are attached having the oldest organization, who shall immediately proceed to canvass the votes as in the other cases of election in his own county, and issue certificate of election to the persons found to be entitled thereto. The returns mentioned in this section may be sent by mail, express, or by some safe private conveyance, being securely sealed up, addressed to the clerk of the board of county commissioners and endorsed on the back, "election returns of———county."

Compensation of judges and clerks.

SEC. 33. There shall be allowed out of the county treasury of each county, to the several judges and clerks of election four dollars per diem, and to the person carrying the poll books from the place of election to the clerk's office, the sum of twenty cents per mile for going and returning, to be paid out of the county treasury.

Violation of act, penalty.

SEC. 34. If any judge or clerk of an election, or any other person, in any manner concerned in conducting the election, shall corruptly violate any of the provisions of this act, he shall forfeit and pay to the county a sum not less than one thousand, nor more than five thousand dollars, and be imprisoned in the county jail until such fine is paid. The same to be recovered by a civil action, in the name of the county commissioners of the proper county, for the use of common schools in said county.

SEC. 35. All district, county and precinct officers, who were elected at the last general election or may be elected at the general election to be held biennially on the Tuesday next following the first Monday in November, shall enter upon their duties on the first Monday of January following the election. When term of office begins.

SEC. 36. In all elections, the persons having the highest number of votes for any office shall be deemed to have been elected. Who and when deemed elected.

SEC. 37. In counting the votes, the judges of the election shall disregard misspelling, or abreviations of the names of candidates for office, if it can be ascertained from such votes for whom they were intended. Abbreviations; misspelling.

OF THE MANNER OF CONTESTING THE ELECTION OF COUNTY, TOWN, DISTRICT OR PRECINCT OFFICERS.

SEC. 38. All contests of county and precinct officers shall be tried in the proper county, and when any elector shall wish to contest such election, he shall file with the clerk of the board of county commissioners, within ten days after such person shall have been declared elected, a statement in writing specifying the grounds of contest verified by affidavit, and such clerk shall issue to the contestant a notice to appear at the time and place specified in the notice, before the probate court, which notice with a copy of such statement shall be delivered to the sheriff who shall within five days serve the same on the contestee, by delivering him a copy of such notice and statement, or by leaving it at his usual place of residence; *provided*, that when a probate judge is a party to the contest, the cause shall be tried in the district court of the district in which such county is located. Contesting election, manner of.

SEC. 39. The probate court at the time specified in the notice, (and it shall appear by the sheriff's return that notice has been duly served on the contestee) shall proceed to try such contest. Each party shall be entitled to subpœnas, and subpœnas *duces tecum* as in ordinary cases at law; and the probate court shall hear and determine such contests in such manner as shall carry into effect the expressed will of a majority of the legal voters, as indicated by their votes for such office, not regarding technicalities or error in spelling the name of any candidate for such office; and the clerk of said board shall issue a certificate to the person declared to be elected by said board, which shall be conclusive evidence of the right of said person to hold office. Probate court to try.

SEC. 40. This act shall not be construed so as to impair n any way the right of any person to contest any elec- Construction of act.

tion in the manner otherwise provided by statute.

OF RESIGNATIONS, VACANCIES AND REMOVALS, AND SUPPLYING VACANCIES.

Resignations.

SEC. 41. Resignations shall be made as follows:

First—By the territorial and district officers, members of the legislative assembly, and by all officers elected by the legislature, to the governor;

Second—By all county officers, to the county commissioners of their respective counties;

Third—By all other officers holding their offices by appointment to the body, board, or officer that appointed them.

VACANCIES.

Vacancies.

SEC. 42. Every office shall become vacant on the happening of any of the following events before the expiration of the term of said office:

First—The death of the incumbent;

Second—His resignation;

Third—His removal;

Fourth—Ceasing to be a resident of the Territory, district, county, or town for which he shall have been appointed or elected or within which the duties of his office are to be discharged;

Fifth—His conviction of any infamous crime or of any offense involving the violation of his official oath.

Sixth—His refusal or neglect to take his oath of office, or to give or render his official bond, or deposit such oath or bond within the time prescribed by law;

Seventh—The decision of a competent tribunal declaring void his election or appointment.

Same.

SEC. 43. The governor shall also declare vacant the office of every officer required by law to execute an official bond, whenever a judgment shall be obtained against such officer for a breach of the conditions of such bond.

SUPPLYING VACANCIES

Supplying vacancies.

SEC. 44. When a vacancy shall occur during the recess of the legislature in any office which the legislature is authorized to fill by election, or which the governor, subject to confirmation of legislative council is authorized to fill; the governor, unless it is otherwise specially provided, may appoint some suitable person to perform the duties of such office until the next session of the legislature.

When certain officers may be appointed.

SEC. 45. When at any time there shall be in any of the county or precinct offices, no officer duly uathorized to execute the duties thereof, some suitable person may be appointed by the county commissioners to perform the duties of such offices; *provided*, that in case there is no board of county commissioners, the governor shall, on notice of such vacancy, create or fill such board.

Officers to qualify.

SEC. 46. Every person so appointed in pursuance of the last two preceding sections shall, before proceeding to execute the duties assigned them, qualify in the same manner as required by law of the officers in whose place they shall be appointed; and they shall continue to exercise and perform the duties of the office to which they shall be so appointed until such vacancy shall be supplied as provided by law.

What act repealed.

SEC. 47. The act entitled an act relative to elections, approved January 23d, 1864, be, and the same is hereby repealed.

SEC. 48. This act shall be in force and take effect from and after its approval by the governor.

The amendments to this law passed at the various sessions and unrepealed are embodied in this act.

COMMISSIONERS.

AN ACT

TO RE-APPORTION THE MEMBERS OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF IDAHO.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

Ada—Two members Council, Five House.

SECTION 1. The county of Ada shall hereafter be entitled to two (2) members of the Council and five (5) members of the House of Representatives.

Alturas—One member Council, Two House.

The county of Alturas shall hereafter be entitled to one (1) member of the Council, and two (2) members of the House of Representatives.

Boise—Two members Council Five House.

The county of Boise shall hereafter be entitled to two (2) members of the Council, and five (5) members of the House of Representatives.

Idaho—One member Council, one House.

The county of Idaho shall hereafter be entitled to one (1) member of the Council, and one (1) member of the House of Representatives.

Lemhi—One member Council, Two House.

The county of Lemhi shall hereafter be entitled to one (1) member of the Council, and two (2) members of the House of Representatives.

Nez Perce—One member Council, Two House.

The county of Nez Perce shall hereafter be entitled to one (1) member of the Council, and two (2) members of the House of Representatives.

Shoshone—One member Council, One member House.

The county of Shoshone shall hereafter be entitled to one (1) member of the Council, and one (1) member of the House of Representatives.

The county of Owyhee shall hereafter be entitled to two (2) members of the Council, and five (5) members of the House of Representatives.

Owyhee—Two members Council Five House.

The county of Oneida shall hereafter be entitled to one (1) member of the Council, and two (2) members of the House of Representatives.

Oneida—One member Council, Two House.

The county of Bear Lake shall hereafter be entitled to one (1) member of the Council, and one (1) member of the House of Representatives.

Bear Lake—One mem. Council, One House.

Sec. 2. All acts and parts of acts, in conflict with this act, are hereby repealed.

This act became a law without the signature of the Governor.

AN ACT

TO PROVIDE FOR THE DISPOSAL OF LANDS ENTERED AS TOWN SITES UNDER THE ACTS OF CONGRESS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. By whom and how lands disposed of.
2. Conveyance, how made, and by what effected,
3. Notice of entry how given, by whom.
4. Statement of party claiming interest, what to contain.
5. Adverse claims, how determined.
6. Trial, what evidence may be given.
7. Proceedings in district court to determine controversy.
8. To render account, compensation, how paid, by whom.
9. Fees must be tendered, payment of.
10 Conveyance to claimants, request of.
11. Rights of officer or trustee entering lands, interest of, how settled.
12. Determining adverse rights, who deemed to possess title.
13. Costs of action, how regulated and recovered.
14, Contracts, agreements for conveyance may be enforced by action.
15 Duties of successors in trust, powers.

By whom and how lands disposed of.

SECTION 1. When the corporate authorities of any town, or any judge for any county, in which any town is situated, enter, at the proper land office, the land, or any part of the land settled and occupied as the site of such town, pursuant to and by virtue of the provisions of the act of Congress entitled "an act for the relief of the inhabitants of cities and towns upon the public lands," approved March second, eighteen hundred and sixty-seven, or of the acts of Congress amendatory thereof or supplementary thereto, such corporate authorities or judge (as the case may be) shall dispose of and convey the title to such lands, or to the several blocks, lots, parcels or shares thereof, to the persons hereinafter described and in the manner hereinafter specified.

Conveyance how made by what effected.

SEC. 2. Any such corporate authorities, or judge, holding the title to any such lands in trust, as declared in said acts of Congress, shall, by a good and sufficient deed of conveyance, grant and convey the title to each and every block, lot, share or parcel of the same to the person or persons entitled thereto, according to his rights or interest in the same as they existed, in law or equity, at the time of the entry of such lands, and when any parcel or share of such lands is occupied or possesssed by one or more persons, claiming the same by grant, lease or sale from one or more other persons, the respective rights and interest of such persons, in relation to each other in the same, shall not be changed or impaired by any such conveyance. Every deed of conveyance, by such corporate authorities or judge, pursuant to the provisions of this act, shall be so executed and acknowledged as to admit the same to be recorded, and if, previous to the issuing of the patent for such lands, it shall contain a covenant that the grantor shall, after the issuing of such patent, execute, acknowledge and deliver to the grantee, his heirs or assigns, such further deed or conveyance, as may be or become necessary to fully vest and perfect the title to the lands therein described in the grantee, his heirs or assigns.

Notice of entry how given, by whom.

SEC. 3. Within thirty days after the entry of such lands, the corporate authorities or judge entering the same shall give public notice of such entry by posting notice thereof in at least three public places in said town, and by publishing such notice in a newspaper printed and published in the county in which such town is situated, or, in case there is no such newspaper, then in some newspaper printed and published at the seat of government, such notice shall be so published once in each week for at least three successive weeks, and shall contain the names of the town site so entered, and an accurate description of the lands so entered as the same is stated in the certificate of entry or duplicate receipt for the purchase money thereof, given by the land officers at the time of entry.

Statement of party claiming interest what to contain.

SEC. 4. Every person, association, or company claiming to be entitled to such lands, or any block, lot, share or parcel thereof, shall, within sixty days after the first publication of such notice, in person, or by his duly authorized agent or attorney, sign a statement in writing containing an accurate description of the particular parcel or parts in which he claims to have an interest, and the specified right, interest or estate therein which he claims to be entitled to receive, also a brief statement of the facts upon which such right, interest or estate depends, for its validity, and deliver the same to, or unto the office of such corporate authorities or judge, and all persons failing to sign and deliver such statement, within the time specified in this section shall, as against any claimant, be forever barred the right of claiming or recovering such lands, or any interest therein, in any court of law or equity.

Adverse claims, how determined.

SEC. 5. In case there are adverse claimants to such lands, or to any part, parcel or share thereof, and the controversy is not settled by agreement in writing, between the parties thereto, such controversy may be determined by voluntary submission thereof by the parties, to reference or arbitration and by the written award of the arbitrators.

In case any such controversy is not so settled or determined within three months from the time of the entry of the land, either of the claimants may bring a civil action against the adverse claimant, in the district court for the county in which the lands are situated.

Trial, what evidence may be given.

SEC. 6. Upon the trial in such action either party may give in evidence the statement mentioned in the fourth section of this act, deposited by the other, or by the person under whom he claims, with the corporate authorities or judge holding the title to the lands in controversy therein and the person who made the first claim to and settlement upon such lands, either in person or by agent, servant or tenant, or those claiming under him, shall in such actions be deemed to have the right to such lands, provided there has been no abandonment thereof since such settlement.

Proceedings in district court to determine controversy.

SEC. 7. In case any controversy between adverse claimants to such lands is not settled or determined by agreement or arbitration within the time allowed therefor as herein before specified, and no action to determine the same is commenced by either claimant within one month thereafter, the corporate authorities or judge holding the title to any such lands, shall bring an action in the district court for the county in which the lands in controversy are situated, against the adverse claimants thereto, to settle and determine such controversy.

The complaint in such case shall be in the nature of a bill of interpleader, and shall set forth a description of the lands thus claimed by adverse claimants, and the character and extent of the right, interest or estate therein claimed by each, as the same appears by the statements deposited with such authorities or judge (as the case may be) pursuant to section three of this act, and shall pray that the several adverse claimants, may be required to appear in such court and prosecute their claims, or be forever barred thereof.

Any party to such action who fails to appear and answer such complaint, and thus prosecute his claim to the land described therein, pursuant to the summons in such case, and the practice of the district court, shall be forever barred of the right to assert any claim or title to such lands, adverse to the other claimants elsewhere or in any court whatsoever.

If the adverse claimants of the land described in the complaint appear, they shall respectively answer such complaint, and either disclaim any right, title, interest, or estate in the land therein described, or set forth the nature, character and extent of the title and interest, which they respectively claim therein.

To render account, compensation, how paid, by whom.

SEC. 8. As soon as may be after the expiration of sixty days, from the first publication of the notice mentioned in the third section of this act, the corporate authorities, or judge, holding the title to the lands described in such notice, shall make a true statement in writing, containing a true account of moneys by him or them expended in the acquisition of the title, and the admimistration or execution of the trust to that time, including all moneys paid by him or them, for the purchase of such lands, all necessary traveling expenses, all moneys paid for posting and publishing such notices, and for proof thereof, and for all other necessary and proper expenses incident to such trust, and also a true account of his or their charges, for time and service employed in the business of such trust to that time. The whole amount of such account for moneys and reasonable charges for compensation shall be a charge upon the lands so held in trust, in favor of the trustee, and shall be paid by the several claimants entitled to such lands, in proportion to the several quantities or shares thereof to which they are respectively entitled.

Fees must be tendered, payment of.

SEC. 9. Before the corporate authorities or judge, holding any such lands in trust as aforesaid, shall be required to execute, acknowledge or deliver any deed of conveyance thereof, or of any lot, block, parcel or share thereof, as hereinbefore mentioned, to any person claiming to be entitled to such deed, such person shall pay or tender to him or them the sum of money chargeable upon the part thereof to be conveyed by such deed according to the statement or account mentioned in the eighth section of this act, the amount to be determined by the proportion which the quantity of the land to be described in such deed bears to the whole quantity of the land of which it is a part, compared with the whole amount thus charged upon the whole quantity of land, together with interest on each of the money items of such account at the rate of twenty-four per cent. per annum, from the time when the same accrued, and also such further sums as are a reasonable compensation for preparing, executing and acknowledging such deed, and the fees of the officers taking the acknowledgment thereof.

Conveyance to claimants, request of.

SEC. 10. After the expiration of sixty days from the time of the first publication of the notice mentioned in the third section of this act, the corporate authorities or judge, holding the title to the lands described therein, shall, upon a reasonable demand or request, and upon the payment or tender to him or them of the moneys mentioned in the last preceding section, execute, acknowledge and deliver to each and every claimant, association or company of claimants of such lands, or of any lot, block, parcel or share thereof, a deed of conveyance thereof, as prescribed in the second section of this act, and according to the statement made and deposited by him or them pursuant to the third section; *provided, however*, that no such deed of conveyance shall be executed, acknowledged or delivered for any part, lot, block or share of such lands to which there are adverse claimants until the controversy thereon is settled or determined in the manner hereinbefore prescribed and whenever any such controversy is so settled or determined, the said corporate authorities or judge, shall upon the like demand or request, and the like payment or tender, and by the deed of conveyance, convey the land or interest, or share therein, the right to which has been thus ascertained to the person thereby determined to be entitled to the same.

Rights of officer or trustee entering lands, interest of, how settled

SEC. 11. In case any judge or other officer who enters any such lands under the provisions of the said acts of Congress, and thus becomes the sole trustee thereof, is possessed of, or entitled to any part, lot, block or share thereof, according to, and by virtue of the provisions of this act, and his claim or right is not claimed adversely to him by any person, he shall be seized and possessed of the title thereto and estate therein, to his own use in fee simple, absolute, free, and discharged of such trust, and no conveyance other than the patent of the lands including the same, shall be necessary to perfect his absolute title thereto.

In case any such land, or share therein, so claimed by said judge or other officer, is claimed by any other person adversely to him, the conflicting claims between him and such other person shall be adjusted or determined by settlement, arbitration or action as hereinbefore prescribed.

Determining adverse rights, who deemed to possess title.

SEC. 12. For the purpose of determining the rights of adverse claimants to any land so entered, the corporate authorities or judge hereinbefore mentioned, shall be deemed to possess and hold the title to such lands in trust from the time of the entry thereof.

Costs of action, how regulated and recovered.

SEC. 13. The costs in the actions mentioned in this act, shall be regulated and recoverable as in other civil actions.

Contracts, agreements for conveyance may be enforced by action.

SEC. 14. Every person in whom the title to any lands shall be declared to be vested under, and by the provisions of this act, shall recover, by good and sufficient conveyance, to any person claiming by, through, or under him, pursuant to any contract or agreement made with such person, upon a reasonable demand therefor, and upon the payment to said person of any moneys that may be due or unpaid to him from the person making such demand, and in case of refusal so to convey said contract or agreement may be enforced by action against said person according to law.

Duties of successors in trust, powers of.

SEC. 15. The successor in office of any judge or other officer entering lands under said acts of Congress, shall, when the trust has not been fully executed, succeed to said trust and have authority to execute the same, as fully as his predecessor might have while in office.

SEC. 16. This act shall take effect and be in force from and after its passage.

AN ACT

CONCERNING GRAND AND PETIT JURORS.

Be it enacted by the Legislative Assembly of the Territory of Idaho of follows:

SECTION 1. Who liable for jury duty.
2. Persons exempt from jury duty.
3. Board of county commissioners to select from poll list.
4. May make such list at any regular meeting.
5. Board shall select persons known to be qualified.
6. Duties of clerk of district court,
7. Clerk, sheriff and other officer to draw jury.
8. Time of issuing venire for jurors.
9. Notice must be given how,
10. Who shall summon jurors.
11, Neglect to attend, penalty for.
12. Number persons to be called of the grand jurors.
13. In cases of deficiency of jurors.
14. Sheriff shall summon other persons.
15. Who may object of competency of grand juror.
16 May appoint a clerk.
17. Grand juror not to disclose proceedings.
18. Grand juror need not state how he voted.
19. Members of grand jury may be required by court to testify.
20. Petit jurors to be summoned after case set for trial.
21. Jurors to be returned by the sheriff or other officer in certain cases.
22. Persons returned must be qualified.
23. In case of irregularity in the dsawing, proceedings upon.
24. Jury may view the premises, when.
25. Neglect of duty by officers, penalty for.
26. Neglect of duty by clerk of district court, fine.
27 In case of failure to summon grand jury duties of judge.
28. Pay of jurors.
29. Clerk to pay juror.

Who liable for jury duty.

SECTION 1. All persons who are citizens of the United States, and qualified electors of this Territory, shall be liable to be drawn as jurors, except as hereinafter provided.

Persons exempted from jury duty.

Sec. 2. The following persons shall be exempt from serving as jurors: The governor, secretary, treasurer, and controller of the Territory; all judges of the courts of record; all priests and ministers of the gospel; preceptors and teachers of academies and schools, engaged as such; one miller to each grist-mill; one ferryman to each licensed ferry; all officers of the United States; attorneys and counselors at law, practising as such; all county, precinct and territorial officers; all active members of fire companies; all persons more than sixty years of age; all persons not of sound mind or discretion, and persons subject to any bodily infirmity, amounting to a disability; and all persons shall be disqualified from serving as jurors who have been convicted of a felony.

Board of county commissioners to select from poll list.

Sec. 3. The board of county commissioners at their regular meetings in January of each year, shall select from the poll lists in their respective counties—last returned to their clerk—and make a list of the names of thirty (30) persons qualified as grand jurors, which list, duly certified by the chairman of the board of county commissioners, shall be forthwith delivered to the clerk of the district court.

May make such list at any regular meeting.

Sec. 4. If, for any cause, such list should not be made and delivered as aforesaid by the board of county commissioners at their regular meeting in January, it shall be their duty to make out and deliver the same as aforesaid at any regular meeting of the board.

Board shall select persons known to qualified.

Sec. 5. In preparing such list the said boards of county commissioners shall select such persons only as they know or have good reason to believe are possessed of the qualifications by law required of persons to serve as jurors, and are of approved integrity, fair character, sound judgment, temperate habits, and well informed.

Duties of clerk of district court

Sec. 6. On receiving such list, the clerk of the district court shall record such names in the jury book, and write each name contained therein on a separate piece of paper, and such pieces of paper, which shall be alike as near as may be, with the names written thereon, shall be by said clerk folded so that such names shall not be visible, and deposited in a box (to be kept by the clerk for that purpose), from which they shall be drawn as hereinafter provided.

Clerk, sheriff and other officer to draw jury.

Sec. 7. At least fifteen days before the first day of each term of the district court, the clerk of the court, in the presence of the sheriff or under sheriff, and a justice of the peace, and such other persons as may be present, shall draw from said box the names of twenty (20) persons to be summoned as grand jurors.

Time of issuing venire for jurors.

SEC. 8. The clerk of the district court shall, immediately after such drawing, issue under the seal of the court, and deliver to the sheriff, or under sheriff, a venire commanding the sheriff to summon the persons so drawn as grand jurors, to appear before the said court at 11 o'clock A, M., on the first day of the next regular term thereof, to serve as grand jurors.

Notice must be given how.

SEC. 9. At least ten days' notice of such drawing shall be given by the clerk, by affixing such notice on the outer door of the house where the court for which such jury is drawn is to be held.

Who shall summon jurors.

SEC. 10. The sheriff or under sheriff or deputy sheriff, shall summon the persons named in such venire as therein commanded at least four (4) days before the first day of the next term of said court, by giving personal notice to each of such persons, or by leaving a written notice at his place of residence with some person over fourteen (14) years of age, and shall return such venire to the court at the opening thereof, specifying in his return, those who were summoned and the manner in which each person was summoned.

Neglect to attend, penalty for.

SEC. 11. If any person duly drawn and summoned to attend as a grand juror in any district court, shall neglect to attend without a sufficient excuse, he shall pay a fine not exceeding fifty (50) dollars, which shall be imposed by the court to which the juror was summoned, which fine shall be paid into the county treasury.

Number persons to be called of he grand urors.

SEC. 12. Sixteen (16) persons shall be called of the grand jurors summoned and appearing, and sworn, who shall constitue a grand jury; and twelve (12) of their number shall concur in finding a bill of indictment, and one (1) of their number to be appointed by the court shall be foreman.

In case of deficiency of jurors.

SEC. 13. In case of a deficiency of grand jurors in any district court, writs of *venire facias* may be issued to the sheriff to return forthwith such further number of jurors as may be required.

Sheriff shall summon other persons.

SEC. 14. The sheriff shall summon such persons accordingly, who shall be bound to attend and serve (unless excused by the court), in the same manner, and subject to the penalty for neglect, as the persons duly drawn by the clerk of the district court, and summoned as hereinbefore provided.

Who may object to competency of grand uror.

SEC. 15. Any person held to answer any criminal charge, may object to the competency of any one summoned to serve as a grand juror, on the ground that he is a prosecutor or complainant upon any charge against such person, or that he is a witness on the part of the prosecution, or has been subpœnaed or bound in a recognizance as such; and if such objection be established, the person so objected to shall be set aside.

May appoint a clerk.

SEC. 16. The grand jury may appoint one of their number to be their clerk, to keep minutes of their proceedings, which minutes shall be delivered to the district attorney when the grand jury shall so direct.

Grand juror not to disclose proceedings.

SEC. 17. No grand juror, or officer of the court, shall disclose the fact that an indictment has been found against any person not in custody or under recognizance, otherwise than by issuing or executing process on such indictment until such person has been arrested; and any grand juror or officer of the court violating the provisions of this section, shall be fined in any sum not exceeding one thousand dollars, which shall be imposed by the court, and be paid into the county treasury.

Grand juror need not state how he voted.

SEC. 18. No grand juror shall be allowed to state or to testify in any court in what manner he or any other member of the grand jury voted on any question before them, or what opinion was expressed by any grand juror in relation to such question.

Members of grand jury may be required by court to testify.

SEC. 19. Members of the grand jury may be required by any court to testify whether the testimony of a witness examined before the grand jury is consistent with, or different from the evidence given by such witness before such court, and they may be required to disclose the testimony given before them by any person upon a complaint against such person for perjury in giving such evidence before them, or upon his trial for such offence.

Petit jurors to be summoned after case set for trial.

SEC. 20. No petit jurors shall be summoned to attend any district court until after a case requiring a jury has been set for trial at an hour fixed by order of the court; and all cases requiring a jury shall be set down for trial so as to be tried consecutively, as near as may be, consistent with the proper disposition of the court. When a case is set for trial, for the trial of which a jury is required, the judge of the court, and sheriff, in open court, shall select from the latest poll-list of the county the names of such number of persons as the court shall order, to serve as petit jurors, and a list of such names shall be made and entered of record by the clerk, who shall immediately issue a venire under the seal of the court commanding the sheriff to summon said persons to appear in such court to serve as jurors, at the time set for the trial of the first case in which a jury is required; and such venire shall be served without delay by the sheriff, under sheriff, or deputy sheriff, as hereinbefore provided for summoning grand jurors, and duly returned by the officer serving the same. The names of the p sons so selected and summoned shall each be written b the clerk on separate pieces of paper, as near alike as may be, and folded so as to conceal the name therein, and deposited in a box, from which the jury shall be drawn. When by reason of challenge or otherwise, a sufficient number of persons duly drawn and summoned cannot be obtained for the trial of any cause, civil or criminal, the court shall proceed as provided in this section to complete the panel.

Jurors to be returned by the sheriff or other officer in certain cases.

SEC. 21. Such jurors shall be returned by the sheriff or his deputy or under sheriff; or, if the sheriff is interested in any cause to be tried by such jury, by any disinterested person appointed therefor by the court.

Persons returning must be qualified.

SEC. 22. The persons so returned shall be such as are qualified and liable to be drawn as jurors according to the provisions of this act.

In case of the irregularity in drawing, proceedings upon.

SEC. 23. No irregularity in any writ of *venire facias* or in the drawing, summoning, returning, or empaneling of grand or petit jurors,, shall be sufficient to set aside a verdict, unless the party making the objection be injured by the irregularity, or unless the objection was made before returning the verdict.

Jury may view the premises, when.

SEC. 24. The jury may in any case, at the request of either party, be taken to view the premises, or place in question, or any property, matter or thing relating to the controversy between the parties, when it shall appear to the court that such view is necessary to a just decision; *provided*, that the party making the motion for such viewing shall advance a sufficient sum to defray the expenses of the jury and the officers who attend them in taking the view; which expenses shall afterwards be taxed like other legal costs if the party who advanced them shall prevail in the action.

Neglect of duty by officers, penalty for.

SEC. 25. When by any neglect of any of the duties required in this act to be performed by any of the officers or persons herein mentioned, the jurors to be returned shall not be duly drawn and summoned to attend the court, every person guilty of such neglect shall pay a fine not exceeding twenty-five (25) dollars, to be imposed by the same court, and paid into the treasury of the county.

Neglect of duty by clerk of district court, fine.

SEC. 26. If any clerk of any district court shall be guilty of any fraud, either by practising on a jury list box previously to drawing a jury, or in drawing a juror, or in placing in a jury list box, the name of any juror which had been lawfully drawn out, and drawing or substituting another in his stead, or in any other way in the drawing of jurors, he shall be deemed guilty of a misdemeanor, and on conviction thereof be punished by a fine not exceeding five hundred (500) dollars, to be paid into the treasury of the county in which the offence is committed.

In case of failure to summon grand jury, duties of judge.

SEC. 27. If for any cause the whole number of any grand jury, or any part thereof, shall fail to be summoned according to the foregoing provisions of this act, the judge of the court may direct the clerk to issue a venire to the sheriff, directing him forthwith to summon a sufficient number of talesmen for such grand jury.

Pay of jurors.

SEC. 28. The pay of grand and petit jurors shall be three (3) dollars per day for each day of actual attendance at court, and fifteen (15) cents per mile for each mile necessarily traveled in going to and returning from court, which shall be paid out of the county treasury, except as hereinafter provided. In all civil cases the party calling for the jury shall pay the *per diem* of such jury for one day, to the clerk, when the jury is empaneled, and before the commencement of the trial; and in case the trial shall continue more than one day, the same party shall pay to the clerk, at the opening of the court on each succeeding day, the *per diem* of the jury for that day; and if the party paying the *per diem* of the jury shall have judgment in his favor, he shall recover the amount of his *per diem*, as costs, from the opposing party in the action.

Clerk to pay juror, how.

SEC. 29. At the close of the trial of any such civil case, the clerk shall pay to each juror the amount he is entitled to, of the money so paid to the clerk for the *per diem* of the jury, and at the end of each term of a district court the clerk shall make out a certificate to each juror entitled thereto, certifying the number of days such juror has attended court, and the number of days for which such juror has received his *per diem* for services in civil cases, and the amount remaining due to him for *per diem* and mileage. Each juror shall state on oath to the clerk the number of miles travel for which he is entitled to pay under the provisions of this act; *provided*, that no juror shall receive mileage for going to, or returning from court more than once during the same term; *provided further*, that no person summoned as a juror, and excused at his own request, shall receive any *per diem* or mileage. And the said clerk shall be entitled to twenty-five (25) cents for each certificate so issued, to be paid out of the county treasury.

SEC. 30. An act entitled "an act concerning jurors," approved January 12, 1871, and all acts and parts of acts conflicting with the provisions of this act, are hereby repealed.

SEC. 31. This act shall take effect and be in force from and after its approval by the governor.

APPROVED *January* 10, 1873.

AN ACT

RELATING TO DISTRICT ATTORNEYS AND DEFINING THEIR DUTIES.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Defining districts.
2. Who elected.
3. Repealing acts.

Defining districts.

SECTION 1. The Territory of Idaho is hereby divided into three districts for the purpose of defining the jurisdiction of the several district attorneys of said Territory.

District No. 1 shall consist of the counties of Nez Perce, Idaho and Shoshone. District No. 2 shall consist of the counties of Boise, Alturas and Lemhi. District No. 3 shall consist of the counties of Owyhee, Ada, Oneida and Bear Lake.

SEC. 2. The person who received the greater number of the votes cast for district attorney in district No. 1 as defined in this act at the general election held in said Territory on the 3rd day of November A. D. 1874, shall be and is hereby declared to be district attorney for said district No. 1 for the term of two years from and after the 1st day of January A. D. 1875. The person who received the greater number of the votes cast for district No. 2 as defined in this act at the said election shall be and is hereby declared to be district attorney for said district No. 2 for the term of two years from and after the 1st day of January A. D., 1875. The person who received the greater number of votes cast for district attorney in the counties of Owyhee, Ada and Oneida at the said election shall be and is hereby declared to be district attorney for district No. 3 as defined in this act for the term of two years from and after the 1st day of January A. D. 1875. **Who elected.**

SEC. 3. All acts and parts of acts in conflict with this act are hereby repealed. **Repealing acts.**

SEC. 4. This act shall take effect from the date of its passage.

APPROVED *January* 14, 1875.

AN ACT

TO ENCOURAGE THE GROWTH AND CULTURE OF FOREST TREES IN IDAHO TERRITORY.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Exemption from taxation for planting.
2. When to take effect.

Exemption from taxation for planting.

SEC. 1. That for every acre of forest trees planted and cultivated for timber within this Territory, the trees thereon not being more than twelve feet apart, and kept in a healthy condition, the sum of one hundred dollars shall be exempted from taxation, upon the owner's assessment, for ten years after such acre is so planted. Such exemption shall be made by the assessor, at the time of the annual assessment, upon satisfactory proof, that the party claiming the same has complied with the provisions of this section; and the assessor shall return to the board of equalization, the name of such person, or firm, claiming exemption, the number of acres planted to timber, and the amount deducted from the valuation of his property; *provided*, that the provisions of this section shall not apply to any person who plants and cultivates a less quantity than five acres, and in accordance with all the provisions of this section; *and, provided, further*, there shall be no exemption on account of nursery trees for sale.

When to take effect.

SEC. 2. This act to take effect, and be in force, from and after its passage, and approval of the governor, and to terminate on the first day of August A. D. 1885.

APPROVED *January* 4, 1875.

AN ACT

FOR THE PROTECTION OF STOCK TO THEIR RIGHTFUL OWNERS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Penalty for driving stock from range.
2. When stock may be removed.
3. Route by which stock may be removed; exceptions, qualifications of.
4. Penalty for violation of act.

Penalty for driving stock from range.

SECTION 1. It shall be unlawful for any person or persons, who shall willfully or knowingly, drive, lead or remove, or caused to be removed in any manner whatever, any stock of any kind whatever, other than his or their own, or such as are by consent of their owner, in his or their charge from any range or lands in this Territory, except hereinafter provided.

When stock may be removed.

SEC. 2. Any person or persons owning or possessing any lands in this Territory, may drive, remove or cause to be removed, from such land, any animal or animals that may come or be thereon without the consent of the owner, or owners, of such lands or those having charge of the same; *provided*, that such animal or animals shall not be driven or removed in any opposite direction, or from the range from whence they came if such facts be known; or, in any direction through any river, creek, swamp, gulch, or over any bluff, or bank, or in any place, or in any manner, to the risk of their lives or injury except as hereinafter provided.

Route by which stock may be removed; exceptions, etc.

SEC. 3. Any person or persons may remove any animal, or animals, from any land owned by, or in his or their possession, by the route by which such animal, or animals entered such premises.

And any person or persons who may find any animal or animals owned by, or by consent of their owners, in his or their charge, banded or mingling with others, he or they may drive such other animals, or as many as may be necessary, to secure his or their own to the nearest or most accessible corral or yard where such animals may be separated, when such animal or animals not belonging to such person or persons so separating, shall, in all cases, be returned to the range from whence they were taken; *provided*, always, that when any animal or animals shall follow after, or, in any other way, after reasonable efforts have been made to prevent it, join any animal or mingle with any band, or herd of animals while the same are being driven, such animal or animals so joining may be driven away with such animal or herd; but if a corral or yard be reached before arriving at the destination of animals so driven they shall then be separated, and those not belonging to or legally in the charge of persons so driving, shall be confined a reasonable time when they shall be set at liberty.

Penalty for violation of act.

Sec. 4. Any person violating any of the provisions of this act, shall, on conviction thereof, be punished by imprisonment in the county jail not more than six months, or by fine in any sum not exceeding one hundred dollars, or by both such fine and imprisonment together with costs of suit.

Sec. 5. All acts and parts of acts in conflict with this act are hereby repealed.

Sec. 6. This act to be in force, and take effect from and after its passage.

Approved *January* 9, 1875.

AN ACT

TO PREVENT CRUELTY TO ANIMALS AND TO PROTECT THE PUBLIC FROM THE SALE OF UNWHOLESOME FOOD.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Cruelty to animals, penalty for.
2. Ibid.
3. Fines, how appropriated.
4. When act to take effect.

SECTION 1. Every person or persons who shall confine or cause to be confined in any corral or other inclosure without proper food and water, for the space of twenty-four hours or more any animal or animals, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not exceeding one hundred dollars, together with costs of suit, or imprisonment in the county jail for a term not less than one day nor more than six months, or both such fine and imprisonment. Cruelty to animals, penalty for.

SEC. 2. Every person or persons who shall slaughter, or in any manner offer or expose for sale to the public for food, any animal or animals that have been confined for the space of twenty-four hours or more without proper food and water shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not less than fifty nor more than one hundred dollars or by imprisonment in the county jail for a term not less than one day nor more than six months or by both such fine and imprisonment. Ibid.

Fines, how appropriated. SEC. 3. All fines and forfeitures collected under the provisions of this act shall be paid into the common school fund for the use and benefit of common schools of the county wherein such offense is committed.

When act to take effect. SEC. 4. This act to take effect and be in force from and after its passage.

APPROVED *January* 6, 1875.

AN ACT

TO PROVIDE FOR THE THE CARE, MANAGEMENT AND CONTROL OF ORDNANCE AND ORDNANCE STORES BELONGING TO THE TERRITORY OF IDAHO.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

Section 1. Ordnance shall be under control of governor.
2. Expenses for keeping same, how paid.
3. When act to take effect.

Ordnance shall be under control of governor,

Section 1. That all ordnance and ordnance stores belonging to the Territory of Idaho shall be under the control and management of the governor, as commander in chief of the militia of the Territory, to be by him held as the property of the Territory and to be used solely for the purposes of public defense, under such rules and regulations as the governor shall prescribe.

Expenses for keeping same, how paid.

Sec. 2. That for the purposes of defraying the necessary expenses of storing, moving and preserving ordnance, and ordnance stores, the territorial controller shall, upon the written order of the governor, issue warrants upon the territorial treasurer for such sum as may be necessary to meet such expenses; said warrants to be paid out of any money in the treasury not otherwise appropriated; *provided*, the said arms, ordnance and ordnance stores, shall be stored in a fire proof building, and the warrants drawn by the governor, for storing, handling and all other incidental expenses connected with said arms, ordnance and ordnance stores, shall nct exceed two hundred and fifty dollars per annum.

Sec. 3. This act shall be in force and effect from and after its passage.

Approved *January* 14, 1875.

DEFINING THE BOUNDARIES OF IDAHO TERRITORY AND THE COUNTIES THEREOF.

Organic Act.

SECTION 1902. Territory of Idaho, boundaries of.

Territory of Idaho, boundaries of.

SECTION 1902. All that part of the territory of the United States, included within the following limits, to-wit: Beginning at a point in the middle channel of the Snake river, where the northern boundary of Oregon intersects the same; then follow down the channel of Snake river to a point opposite the mouth of Kooskooskia or Clear Water river; thence due north to the forty-ninth parallel of latitude; thence east along that parallel to the thirty-ninth degree of longitude west of Washington; thence south, along that degree of longitude. to the crest of the Bitter Root mountains till its intersection with the Rocky mountains; thence southward along the crest of the Rocky mountains to the thirty-fourth degree of longitude west of Washington; thence south along that degree of longitude to the forty-second degree of north latitude; thence west, along that parallel, to the eastern boundary of the State of Oregon; thence north along that boundary, to the place of beginning, is created into a temporary government by the name of the Territory of Idaho.

AN ACT

CREATING THE COUNTY OF ONEIDA.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Defining boundaries.

SECTION 1. That all that portion of Idaho Territory within the following boundaries be, and the same is hereby created the county of Oneida, to-wit: Commencing at the point where the intersection of the meridian of longitude one hundred and thirteen degrees with the northern boundary of Utah Territory, and running from thence north along said meridian one hundred and thirteen degrees to Snake river, thence up said river in an easterly direction, to the one hundred and twelfth meridian, thence north on said meridian to the summit of the Rocky mountains, and from thence along said summit in an easterly direction, and in a southerly direction, to the boundary of Colorado Territory, and from thence west along said boundary of Colorado to Utah Territory, and from thence along the said northern boundary of Utah to the place of beginning; and the county seat of said county of Oneida is hereby located at Soda Springs. *

Defining boundaries

SEC. 2. This act shall take effect and be in force from and after its approval by the governor.

APPROVED *January* 22, 1864.

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* County seat removed to Malad City.

AN ACT

CREATING AND ORGANIZING THE COUNTY OF BEAR LAKE.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That all that portion of the county of Oneida, commencing at the twenty-third mile post on the boundary line, between Utah and Idaho Territories, and running thence northerly along the summit of the range of mountains between Cache valley and Bear Lake valley to the corner of townships nine and ten south of range forty-one east; thence east twelve miles; thence north to the summit of the divide between the waters of Bear river and the waters of Blackfoot river; thence south on said last named line to the south east corner of Idaho Territory, thence west to the place of beginning; be, and the same is hereby organized into a new county to be called the county of Bear Lake, and the county seat of said county of Bear Lake is hereby fixed at the town of Paris.

SEC. 2. There shall be three county commissioners, appointed by the governor, by and with the consent of the council, who shall constitute a board of county commissioners, pro tempore, for said county, who shall hold their respective offices until their successors are elected and qualified, as hereinafter provided by this act.

SEC. 3. The commissioners so appointed, shall respectively take their oaths of office and enter upon their duties on the first Monday in April A. D. 1875, and shall immediately proceed and appoint such pro tempore county officers for said county of Bear Lake as are provided by law for other counties of this Territory, who shall take their respective oaths of office, and hold their re-respective offices until their successors are elected and qualified, and said board of pro tempore county commissioners of said county of Bear Lake shall be governed by the general laws in this Territory prescribing the right, and duties of boards of county commissioners, except as herein provided.

Provided, that the several precinct officers now in office in the several precincts within said Bear Lake county shall hold their offices, during the term for which they were respectively elected, and the oath of office of the county officers aforesaid may be taken before any justice of the peace in either of said precincts.

SEC. 4. There shall be a special election held in the county of Bear Lake on the first Monday in June A. D. 1875 for the election of all county officers provided by law for other counties in this Territory, including a board of county commissioners, and such special election shall be conducted in the manner provided by statute for the holding of special elections in this Territory, and on the second Monday thereafter, the county officers so elected, shall qualify as provided by law for such officers, and enter upon the duties of their respective offices, and hold the same until their successors are duly elected and qualified, and the board of county commissioners of said county of Bear Lake shall, on said last named day, hold a special meeting of their board for the approval of the bonds of such county officers so elected at said special election, and for the transaction of such business as may come before them.

SEC. 5. That, on the third Monday in June A. D. 1875, the county auditor and one of the county commissioners of Bear Lake county and the county auditor and treasurer of Oneida county shall meet at the office of the treasurer of the last named county, and from the books and records of said county of Oneida, shall ascertain the total amount of indebtedness of Oneida county, on the day of the taking effect of this act, and also the amount on hand in the county treasury of the last named county, as shown by said books and shall also ascertain from the assessment roll of the county of Oneida for the year 1874, the amount of property assessed in the portion of said county of Oneida, hereby organized as the county of Bear Lake. And the county of Bear Lake is hereby required to pay to the county of Oneida the pro rata proportion of said indebtedness of said county of Oneida, as shown by said assessment roll, after deducting from the entire amount of the indebtedness of said county of Oneida, the cash in their county treasury. The recorder of the county of Bear Lake, who shall hereafter be elected or appointed, is hereby authorized to transcribe into books to be provided for that purpose such parts of the records of Oneida county as relate to matters within the county created by this act, and the same shall have the same force and effect, and be of the same degree of evidence as the original records.

SEC. 6. That when the amount required by this act to be paid by the county of Bear Lake to the county of Oneida shall have been ascertained and adjusted as herein provided, the same shall be reported to the board of county commissioners of Bear Lake county, and thereupon the county auditor of Bear Lake county shall draw the warrants of the county of Bear Lake in sums not exceeding the sum of five hundred dollars each, for the total amount of such indebtedness, which warrants shall not be transferable, and shall deliver the same to the county treasurer of Oneida county, and said warrants shall draw interest at the rate of ten per cent. per annum, and be paid as hereinafter provided.

SEC. 7. The board of county commissioners of Bear Lake county shall, at the time of levying taxes for the year 1875, and annually thereafter levy a special tax of two mills on each and every dollar of taxable property in said county of Bear Lake which shall be a permanent sinking fund, and shall be paid by the treasurer of Bear Lake county, of soon as collected, to the treasurer of Oneida county in satisfaction of said warrants, and when the whole sum of said indebtedness shall be satisfied from the proceeds of said special tax, or in any other manner provided by the county of Bear Lake said special tax shall cease.

SEC. 8. The election of county commissioners in and for Oneida county at large, at the last general election is hereby validated and legalized.

SEC. 9. This act shall take effect and be in force from and after its passage.

APPROVED *January* 5, 1875.

AN ACT

ORGANIZING AND DEFINING THE BOUNDARIES OF BOISE COUNTY.

Be it enacted by the Legislative Assembly of the Territory of Idaho of follows:

SECTION 4. **Defining boundaries, etc.**

SEC. 1. All that portion of Idaho Territory lying within the following boundaries, to-wit: Beginning at a point on Snake river latitude forty-four and a half, thence in a due easterly direction to longitude one hundred and fourteen and a half, thence in a southwestern direction on the dividing ridge between the waters of Moore's creek and the north fork of Boise river, following said divide to the confluence of Grimes' creek with Boise river, thence in a southerly direction to a point on Snake river opposite the mouth of Goose creek, thence down the center of the channel of Snake river to the place of beginning; be and the same is hereby organized into a county called Boise.

Defining boundaries, etc,

APPROVED *February* 4, 1864.

AN ACT

TO ORGANIZE THE COUNTY OF ADA.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Defining boundaries.
2. Exempt from jurisdiction of Boise county.
3. Recorder to transcribe, etc.
4. Governor to appoint officers.
5. Election.
6. Terms of office.
7. To pay equitable proportion of debt of Boise county.

Defining boundaries.

SECTION 1. That all that portion of Boise county, in the Territory of Idaho, included within the following lines, to-wit: Commencing at the point where Grimes' creek forms a junction with Boise river, on the westerly line of Alturas, and on the easterly line of Boise county, and running thence in a north-westerly direction to a point on Payette river, known as Picket's corral; thence due north to the south line of Idaho county; thence west along said line of Idaho county to the middle of the channel of Snake river to the point where the westerly line of Alturas county intersects the same; thence in a northerly direction along said westerly line of Alturas county, to the place of beginning, be and the same is hereby organized into a county, to be called the county of Ada, and the county seat of said county is hereby located at Boise City.

Exempt from jurisdiction of Boise county.

SEC. 2. The said county of Ada shall, from and after the passage of this act, be exempt from all jurisdiction and control of the officers of Boise county, except that all taxes heretofore levied upon any person or property by the county last named, and which have not been paid, may be collected in the same manner as though this act had not been passed.

Recorder to transcribe, etc.

SEC. 3. The recorder of the county of Ada, who shall be hereafter elected, is hereby authorized to transcribe into books to be procured for that purpose, such parts of the records and files of Boise county, as relate to matters within the county created by this act, and the same shall have the same force and effect, and be of the same degree of evidence as the original files and records.

Governor to appoint officers.

SEC. 4. It shall be the duty of the governor to appoint all the county officers of said county of Ada; and the county commissioners so appointed shall, at their first regular session, to be held on the first Monday in February, appoint all the necessary precinct officers; and all officers so appointed, shall continue in office until their respective successors shall have been elected and qualified.

Election.

SEC. 5. An election shall be held at the various precincts in said county of Ada, on the first Monday in March, one thousand eight hundred and sixty-five, subject to the laws and regulations governing general elections, at which election all county and precinct officers for said county shall be chosen; and the several officers so chosen shall, within twenty days thereafter, duly qualify according to law, and enter upon the discharge of the duties of their respective offices.

Terms of office.

SEC. 6. The term of office of all the officers elected under the provisions of this act, shall expire on the first Monday in January, one thousand eight hundred and sixty-six.

To pay equitable proportion of debt of Boise county.

SEC. 7. The county of Ada shall pay to the treasurer of Boise county, a just and equitable proportion of the debts for which the said county of Boise is now liable; and the auditors of said counties shall, on or before the first Monday in September, one thousand eight hundred and sixty five, meet at Idaho City, and apportion the same, and ascertain the amount to be paid as aforesaid, from the assessment rolls of said counties, that may be made in the year one thousand eight hundred and sixty-five; and in case the said auditors shall be unable to agree as to such apportionment, they shall refer the matter in difference between them to the judge of the second judicial district, who shall determine the same, and such determination shall be final.

SEC 8. This act shall take effect and be in force from and after its approval by the governor.

APPROVED *December* 22, 1864.

AN ACT

DEFINING THE BOUNDARIES OF OWYHEE COUNTY,

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Defining boundaries of Owyhee county.

Defining boundaries of Owyhee.

SECTION 1. All that portion of Idaho Territory lying within the following boundaries, to-wit: Beginning on Snake river at the mouth of the Owyhee and running due south along the eastern boundary line of the State of Oregon to the northern boundary of Nevada Territory, thence east with the boundary line of the Territory of Nevada and Utah to the one hundred and thirteenth meridian of longitude, thence north with said meridian to Snake river, thence down the channel of Snake in a westerly direction to the mouth of the Owyhee the place of beginning; be and the same is hereby organized into a county called Owyhee, and the county seat of said county is hereby located at Ruby city.*

SEC. 2. This act to take effect and be in force from and after its approval by the governor.

APPROVED *February* 4, 1864.

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* County seat at Silver City.

AN ACT

DEFINING THE BOUNDARIES OF SHOSHONE COUNTY.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Defining boundaries of Shoshone.

Defining boundaries of Shoshone.

SECTION 1. All that portion of Idaho Territory contained in the following boundaries to-wit: Beginning at the mouth of the south fork of Clearwater, thence up said south fork of Clearwater to the Lolo fork, thence with the Lolo fork in an easterly direction to the summit of the Bitter Root mountains, thence in a northerly direction with said range of mountains, until said range turns in a westerly direction and is called Couer d' Alene, thence with said Cour d' Alene range of mountains in a westerly direction until a point is attained from which running a line due south will strike the mouth of the south fork of Clearwater the place of beginning, be and the same is hereby organized into a county called Shoshone.

APPROVED *February* 4, 1864.

AN ACT

DEFINING THE BOUNDARIES OF ALTURAS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Defining boundaries of Alturas county.

Defining the boundaries of Alturas county.

SECTION 1. All that portion of territory lying within the following boundaries, to-wit: Beginning at a point on Snake river opposite the mouth of Goose creek, thence with the center of the channel of Snake river up to the one hundred and twelfth meridian of longitude, thence with said meridian to the south-east corner of Idaho county on the summit of the Rocky mountains, thence due west to the north-east corner of Boise county, thence in a south westerly direction on the dividing ridge between the waters of Moore's creek and the north fork of Boise river, thence following said divide to the confluence of Grimes' creek with the Boise river, thence in a southerly direction to the place of beginning; be and the same is hereby organized into a county to be called Alturas, and that the county seat of the said county of Alturas is hereby located at the town of Esmeralda. *

APPROVED *February* 4, 1864.

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* County seat changed to Rocky Bar.

AN ACT

DEFINING THE BOUNDARIES OF NEZ PERCE COUNTY.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Defining boundaries.

Defining boundaries.

SECTION 1. That all that portion of Idaho Territory contained within the following boundaries to wit: Beginning at the middle channel of Snake river, opposite the mouth of Clearwater river; and thence due north along the westerly line of Idaho Territory to the main divide between the waters of the Palouse river and Lah-toh, or Hangman's creek; thence easterly to the westerly line of Shoshone county; thence southerly along said line to the Clearwater river; thence up the south fork of Clearwater river to Lolo creek; thence with Lolo creek in an easterly direction to the summit of the Bitter Root mountains; thence southerly along the summit of said mountains to the junction of Salmon river and Bitter Root mountains; thence in a westerly direction along the summit of Salmon river and Clearwater mountains to a prominent landmark known as the "Buffalo Hump;" thence westerly along said divide between the waters of White Bird creek and Camas prairie, to a point where the road leading from Lewiston to Slate creek crosses said divide; thence in a direct line to the foot of Ponto bar on Salmon river; thence in a direct line to a point on Snake river known as Pittsburg landing; thence down the center of the channel of Snake river to the place of beginning, shall comprise the county of Nez Perce.

APPROVED *January* 9, 1867.

AN ACT

TO DEFINE THE BOUNDARIES OF IDAHO COUNTY AND FOR OTHER PURPOSES.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. The boundaries of the county of Idaho shall hereafter be as follows: Commencing at the junction of Salmon river with Snake river; thence up the channel of Salmon river to the mouth of Maloney creek; thence easterly to the mouth of the north fork of the south fork of Clearwater; thence due east to the Lolo fork of Clearwater; thence up the Lolo fork to the summit of the Bitter Root mountains; thence southeastwardly and southerly, following the present defined boundary line between the Territories of Idaho and Montana, to the north-west corner of Lemhi county; thence south and south-west along the line between the counties of Idaho and Lemhi to Boise county; thence westerly and north-westerly along the present line dividing Idaho county and Boise county, and the present line dividing the counties of Ada and Idaho to the extreme north corner of Ada county on Snake river,thence down Snake river.to the place of beginning.

SEC. 2. All that part of Nez Perce county being south and east of the boundary line established by section one (1) of this act, shall hereafter be attached to and form a part of the county of Idaho.

SEC. 3. In consideration of the grant of territory hereby made by Nez Perce county, the county of Idaho shall be liable for, and shall assume and pay to the county of Nez Perce forty per cent. of the indebtedness of said Nez Perce county, at the time this act shall take effect and be in force.

The amount of such indebtedness of said Nez Perce county to be so assumed and paid by Idaho county shall be ascertained as follows: The auditor of Idaho county shall, within three months from the taking effect of this act, ascertain from the reports of the auditor and Treasurer of Nez Perce county, or, if such reports be not complete, or be from any cause unsatisfactory, then from the books of said auditor and treasurer, the total amount of county warrants of said Nez Perce county, drawn and outstanding, and shall report the same to the board of county commissioners of Idaho county; from the total sum of such indebtedness shall be deducted the amount of cash in the county treasury and the further sum of one thousand dollars assumed to be the value of county property retained by Nez Perce county. Of the net indebtedness so ascertained, the county of Idaho shall be liable for and shall pay to Nez Perce county forty per cent. upon such adjustment made and reported to the board of county commissioners, as herein provided for. The auditor of Idaho county shall be authorized to draw his warrants in sums not exceeding five hundred dollars each, payable to the treasurer of Nez Perce county, for the benefit of said county, and not transferable, and he shall deliver the same to the treasurer of said Nez Perce county.

Sec. 4. The county commissioners of Idaho shall at their next regular meeting, after the passage and approval of this act, and annually thereafter, as long as the same may be required, for the payment of the warrants to be drawn as provided by section three (3) of this act, set apart the whole amount of poll and eighty per cent. of the hospital taxes collected in said county, and ten per cent. derived from property taxes, which shall constitute a sinking fund, for the payment of warrants in favor of Nez Perce county, and the county treasurer of Idaho county shall, on the first day of July and January of each year, and oftener if directed by the county commissioners, pay to the treasurer of Nez Perce county the whole amount in said sinking fund to be by him applied to the redemption of said warrants.

Sec. 5. The board of county commissioners of Idaho county shall call a special election to be held at all the usual voting places in the whole county on the first Monday of June, 1875, at which time there shall be elected a full board of county commissioners, who shall hold their offices until the next general election, and until their successors are elected and qualified. They shall qualify and enter upon the discharge of their duties on the first Monday of July subsequent to said election; and at said election there shall be submitted to the voters of said county the permanent location of the county seat, for which purpose the three points or places, Washington, Slate creek and Mount Idaho, shall be voted for, and the point or place so designated, receiving the highest number of votes, shall be declared the county seat of Idaho county.

The special election to be held under the provisions of this act shall be canvassed and governed by the general election law of the Territory.

SEC. 6. The board of county commissioners of Idaho county shall, at their first regular or special session after said election, provide for and direct the removal of all the county records, books, papers and other county property, to be removed to the said county seat, and provide county buildings, and do all things necessary to be done to carry the provisions of this act into effect.

SEC. 7. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 8. This act to take effect and be in force from and after its approval by the governor.

APPROVED *January* 8, 1875.

AN ACT

TO ESTABLISH THE BOUNDARY LINE BETWEEN BOISE, ADA AND IDAHO COUNTIES.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Defining boundaries of Boise, Ada and Idaho counties.
2. Repealing clause,

Defining boundaries of Boise, Ada and Idaho counties.

SECTION 1. That the act defining the boundaries of Ada county shall read as follows: Commencing at the mouth of Moore's creek, at its junction with Boise river, running thence in a northerly direction to the mouth of a certain canyon about 2 miles above "Picket's Corral," running thence northwest to the top of a bute dividing the waters of Squaw creek, and thence entering into the Payette river west of said Squaw creek, thence north to the line of Idaho county, thence westerly to Brownlee's ferry on Snake river, at the Oregon line.

Repealing cleause.

SEC. 2. All acts and parts of acts inconsistent with this act, are hereby repealed.

APPROVED *January* 10, 1867.

AN ACT

ENTITLED "AN ACT CREATING AND ORGANIZING THE COUNTY OF LEMHI."

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. County of Lemhi, creation of, boundaries.
2. " seat, location of.
3. " Commissioners, appointment of, powers of.
4. " " to meet at county seat, to make appointments. Officers, terms of.
5. " " shall order special election, when held.
6. " " laws of Territory to govern.
7. " " to re-apportion county and Territoria tax. etc.
8. " of Lemhi to pay Idaho county portion of indebtedness

County of Lemhi, creation of, boundaries.

SECTION 1. That all that portion of Territory contained in the present county of Idaho and lying east of a line drawn from a point on the extreme northern boundary of Idaho county; thence in a direct line south to the extreme southern boundary of said county, so as to intercept the confluence of the middle fork of Salmon river with the main Salmon river, be and the same is hereby organized into a county called Lemhi.

County seat, location of.

SEC. 2. The county seat of said county of Lemhi shall be and the same is hereby located at Salmon city.

Commissioners, appointment of, etc.

SEC. 3. That George L. Shoup, Benjamin S. Heath and E. H. Tuttle are hereby appointed a board of county commissioners for the said county of Lemhi, who shall possess and exercise all the powers of county commissioners conferred upon county commissioners of other counties.

To meet at county seat, to make appointments.

SEC. 4. The commissioners hereby appointed shall immediately after their qualification, and as early as the first Monday in April, A. D., 1869, meet at the county seat of said county for the purpose of making appointments of all officers that they are now or may be hereafter authorized by law to appoint, and shall require of all officers thus appointed to qualify under the general laws of this Territory. The officers thus appointed shall hold their offices until their successors are duly elected and qualified.

Officers, terms of. Shall order special election, when held.

SEC. 5. The board of county commissioners at their first meeting shall order a special election to be held in Lemhi county on the first Monday in June, A. D., 1869, for the purpose of electing all county officers authorized by law to be elected; and the officers thus elected shall hold their offices respectively until the next general election thereafter and until their successors are duly elected and qualified.

Laws of Territory to govern.

SEC. 6. After the organization of said county of Lemhi, all laws and parts of laws of a general character applicable to other counties of this Territory shall equally apply to Lemhi county.

To re-apportion county and Territorial tax, etc.

SEC. 7. The board of county commissioners at their first meeting in April, A. D., 1869, shall apportion the county and territorial tax, and they are hereby authorized and empowered to levy and collect a sufficient amount for the county expenditure upon all taxable property; and they are also authorized and empowered to levy and collect such special taxes as the laws of this Territory may authorize and empower them to levy and collect.

County of Lemhi to pay Idaho county portion of indebtedness, etc.

SEC. 8. The county of Lemhi shall assume and pay seven hundred dollars of the county indebtedness of the county of Idaho, and it is hereby made the duty of the county auditor of the county of Lemhi, as soon as he is elected and qualified and enters upon the duties of his office, to draw a warrant on the treasurer of the county of Lemhi, payable to the county treasurer of the county of Idaho, for the sum of seven hundred dollars, which warrant shall be delivered to the county treasurer of the county of Idaho, and shall be paid on or before the first day A. D., 1870, and the county of Lemhi shall not be liable for any portion of the indebtedness of the county of Idaho except as above provided.

SEC. 9. This act to take effect and be in force from and after its passage and approval by the governor.

APPROVED *January* 9, 1869.

AN ACT

DEFINING THE DUTIES AND LIABILITIES OF SHERIFFS, IN REGARD TO MISCELLANEOUS LICENSES.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Miscellaneous licenses, duties of sheriff.
2. Repealing clause.

Miscellaneous licenses duties of sheriff.

SECTION 1. That it shall be the duty of the sheriff of each organized county in this Territory, on the first Monday in every month, to make out and return to the county auditor of his county, verified by his oath, a list of every person or company, within his county required by law to take out any miscellaneous license, of whatever name or grade, stating therein when the last license taken out by such person or company commenced to run and when the same will terminate, and in case the sheriff shall allow any person or company transacting any business, or following any occupation, for which the taking out of any miscellaneous license whatever is required, within his county, to so transact such business or follow such occupation, without first having taken out the license required by law, the said sheriff shall after the termination of thirty days from the time such license should have been taken out, become liable upon his official bond for the amount of such license, to be recovered in the name of the Territory before any court of competent jurisdiction, unless within said thirty days from the time said license should have been so taken out, the sheriff shall have inaugurated legal proceedings for the enforcement of the collection of such license.

Repealing clause.

SEC. 2. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 3. This act to take effect and be in force from and after its passage.

APPROVED *January* 6, 1873.

AN ACT

FOR THE ENCOURAGEMENT OF PRISONERS TO GOOD CONDUCT IN THE DIFFERENT PRISONS IN THIS TERRITORY.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Deduction for good behavior.
2. To be certified to by keeper or warden.

Deduction for good behavior.

SECTION 1. Any prisoners in any of the prisons of this Territory, or who may hereafter be confined in any of the prisons of this Territory, for a less term than life, shall be entitled to five days deduction from his full term of imprisonment, for each and every consecutive thirty days good behavior during said term of imprisonment.

To be certified to.

SEC. 2. Said good behavior shall be certified to every three months, by the keeper or warden of said prisons, and entered on the records of said prisons, and when a prisoner shall have served his term, less the number of days he is credited by for good behavior, he shall be set at liberty.

SEC. 3. This act to take effect from and after its passage.

APPROVED *January* 9, 1873.

AN ACT

TO EXEMPT RAILROADS BUILT WITHIN THE LIMITS OF IDAHO TERRITORY FROM TAXATION FOR SEVEN YEARS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Exempt from taxation, until when.
2. This act to take effect, when.

Exempt from taxation, until when.

SECTION 1. That so much of any railroad as shall be constructed within the limits of Idaho Territory, including rolling stock and depots belonging to the same, is hereby exempted from all territorial, county and municipal taxation, until the first day of January, 1880; *pro-*

vided, the company owning and constructing such railroads shall claim said exemption within one year from the approval of this act, by filing their claim in the office of the secretary of the Territory; and *provided further*, that said claim shall be accompanied by the written agreement of said company, stating that in consideration of such exemption from taxation, until the first day of January, A. D., 1880, said company will charge no higher rate or tariff for freight and passengers in the ratio of the distance carried to or from any point in Idaho Territory, over the whole or any portion of their line, than shall be at the time charged for freight and passengers of the same class, for the same distance on the Central and Union Pacific railroads. Said agreement to be in force during the period of said exemption.

Sec. 2. This act shall take effect and be in force from and after its approval by the governor.

This act to take effect, when.

Approved *January* 9, 1873.

AN ACT

RELATING TO PRINTING DONE FOR THE TERRITORY BY ORDER OF THE SECRETARY OF THE TERRITORY.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Election proclamation, printing of.
2. Payment for.

Election proclamation, printing of.

SECTION 1. That the secretary of the Territory of Idaho is hereby authorized and empowered to select four newspapers, published in the Territory of Idaho, to print the governor's election proclamation.

Payment for.

SEC. 2. That the sum of one hundred dollars to be equally divided between the said four newspapers, and the same is hereby appropriated biennially out of any money in the treasury, to pay for the printing of such proclamation.

SEC. 3. The controller is required to draw his warrant on the territorial treasurer for the sum of one hundred dollars, biennially, in favor of the secretary of the Territory, as full compensation for the printing of said election proclamation.

SEC. 4. No printing for Thanksgiving proclamations will be paid for out of the territorial treasury.

SEC. 5. This act to be in force from and after its passage.

APPROVED *January* 9, 1873.

AN ACT

TO PROVIDE FOR THE PROTECTING OF STOCK ABOUT QUARTZ MILLS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Reservoirs, etc., to be enclosed.
2. Liability of owners.

SECTION 1. That all owners and operators of quartz mills in this Territory, shall enclose with a good and substantial fence, sufficient to turn stock, all reservoirs and dumps, or other material, when known to contain poison which is injurious to the health and destructive to the life of stock, and shall construct a suitable drain to convey the water from such reservoirs or dumps into a running stream.

Reservoirs, etc., to be enclosed.

SEC. 2. Every person or persons who shall fail to comply with the provisions of section one of this act shall be liable to the owners of any horse, mule, cow or other stock, that may be injured, poisoned or destroyed by drinking the water or acids that may flow from said mills, in a civil action, in twice the damage done, if said stock shall be injured or poisoned; and in twice the value of the property if said stock shall be killed or destroyed; *provided*, that the provisions of this act shall only apply to Alturas county.

SEC. 4. This act shall take effect and be in force from and after its passage.

APPROVED *January* 10, 1873.

AN ACT

TO PREVENT THE TRESPASSING OF ANIMALS UPON PRIVATE PROPERTY.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Trespass of animals, penalty.
2. Person killing or maiming animal for trespass, penalty for.
3. Joint cultivators.

Trespass of animals, penalty.

SECTION 1. If any horse, mule, jack, jenny, hog, sheep, goat, or any head of cattle shall break into any ground enclosed by a lawful fence, the owner or manager of such animal shall be liable to the owner of such enclosed premises for all damages sustained by such trespass; and if the trespass be repeated, by neglect of the owner or manager of such animals, he shall, for the second or every subsequent offense, or trespass, be subject to double the damages of such trespass to the owner of said premises.

Person killing or maiming animal for trespass, penalty for.

SEC. 2. If any owner or occupier of grounds or crops trespassed upon, provided said ground be enclosed within a fence, by animals entering upon or breaking into his or their grounds, whether enclosed by a lawful fence or not, shall kill, maim or materially injure the animal or animals so trespassing, he, she or they shall be liable to the owner of such stock for all damages and for the costs accruing from a suit for damages, when necessarily resorted to for their recovery; *provided*, the owner or occupier of such grounds or crops so damaged and so trespassed upon may take up and safely keep, at the expense of the owner or owners thereof, after due notice to said owners of such known animals, or so many of them as may be necessary to cover the damages he may have sustained, for ten days; the same may be posted under the estray laws of the Territory. And before restitution shall be had by the owner or owners of such animals, all damages done by them, as well also as the expenses of posting and keeping them, shall be paid. Any justice of the peace in the township or precinct shall have jurisdiction of such reclamation of animals, together with the damages, expense of keeping and posting the same, when the amount claimed does not exceed one hundred dollars.

Joint cultivators.

SEC. 3. When two or more persons shall cultivate lands under one inclosure, neither of them shall place or cause to be placed any animal on his, her or their ground, to the injury or damage of the other or others, but shall be liable for all damages thus sustained by the other or others; and if repeated after due notice is given, and for every subsequent repetition, double damages, to be recovered in any court having jurisdiction.

SEC. 4. This act shall take effect and be in force from and after its approval by the governor.

APPROVED *January* 29, 1864.

AN ACT

DEFINING THE DUTIES AND LIABILITIES OF STOCK RANCHERS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

[SECTION 1. Who deemed stock rancher.
2. Duty of.
3. Using horses, penalty for.

Who deemed stock rancher.

SECTION 1. Any person who, for a consideration, shall take horses or other stock to keep and take care of by the day, week month or year, shall be deemed a stock rancher.

Duty of.

SEC. 2. It shall be the duty of every stock rancher to use due diligence to prevent the death or loss of, or injury to, any animal in his charge as such rancher; and in case of injury to such animal while in possession of a stock rancher, the owner thereof, or other person acting as his agent, shall have power to recover, before any court of competent jurisdiction, the full amount of damages sustained by such animal or animals; *provided*, it shall appear to the satisfaction of the court or jury where such cause shall be tried, that such loss, death or injury was in consequence of the failure of the stock rancher to use due and reasonable diligence to prevent such death, loss or injury.

Using horses, penalty for-

SEC. 3. Any stock rancher using any animal placed in his charge, by riding or working the same in any manner whatever, unless there is an express contract between himself and the owner or owners thereof, allowing such animal or animals to be used, shall forfeit all claims or demands he may have against the owner or owners thereof for ranch fees on such animal or animals; and he shall furthermore be liable for any damages or injury such animal or animals may sustain by reason of such use, to be recovered in an action at law before any court of competent jurisdiction.

SEC. 4. This act shall take effect and be in force from and after its approval.

APPROVED *December* 21, 1872.

AN ACT

RELATIVE TO ESTRAYS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. 2nd session.
2. Amendment. 3rd session.
3. 2nd session.
4. 2nd session.
5. Amendment. 3rd session.
6. 2nd session.
7. Amendment. 3rd session.
8. 2nd session.
9. Ibid.
10. Ibid.

2nd session, SECTION 1. That any person taking up any stray animal, shall within five days thereafter, notify the owner thereof, if to him known, and request such owner to pay all reasonable charges and take such stray away.

Amendment, 3rd session. SEC. 2. Any person finding an animal known to be an estray upon land owned and enclosed by such person, at any time between the first day of November and the first day of April, may immediately take up such animal as an estray; or if, during such time, an animal be found upon the premises owned and occupied by another, in a condition as to require food to preserve its life, it may be taken up and published as an estray in accordance with the provisions of this act.

2nd session. SEC. 3. If the owner of any stray animal be unknown, the taker-up shall, within ten days after taking up such animal, post up written notices, (giving a description of such animal, the marks, brands, natural or artificial, as near as practicable, the name and residence of the taker-up, and the time at which the same was taken up) in three of the most public places in the county; one of which shall be posted at the door of the court house or auditor's office of said county.

Sec. 4. Every taker-up of an estray or estrays shall within one month after taking up the same, procure an appraisal thereof, by having two disinterested persons, resident within the county where such stray or strays are taken up, to value and appraise the same, and make return of such valuation, together with the kind and description, marks and brands, natural or artificial, of such stray or strays, to the auditor of the county in which the same may be, which return must be sworn to by at least one of the appraisers, before some person legally authorized to administer an oath, and subscribed to by both, and a certificate of such oath shall be attached to said return and filed with the same; and the auditor of the county shall enter in a book for that purpose, the name of the taker-up of such stray or strays, together with the description of the same as given, the appraiser's value, and the time when taken up, which shall be kept for the inspection of the public. Ibid.

Sec. 5. If the owner, or any person entitled to the possession of any estray, shall appear at any time within six months after said notice is filed with the auditor as aforesaid, and make out his right thereto, he shall be entitled to the possession and ownership of such estray, upon paying all lawful charges which have been incurred in relation to the same. Amendment, 3rd session.

Sec. 6. If the owner and taker-up of any estray cannot agree upon the amount of such charges, or for the use of any such stray, either party may make application to any justice of the peace of the county where such stray was taken up to settle the same, and the party making such application shall give notice thereof to the other party, and if any amount be found due to the taker-up by said justice, over the value of the use of such stray, the same shall be a lien on said stray until paid by the owner, together with the cost of such adjudication, which, if not paid, said justice may enter up judgment and issue execution for, commanding the sale of such estray to pay such debt and cost, as in any other judgment for debt; *provided*, that only such stray can be made liable for debt and cost, and that either party shall have the same right to appeal to the district court as in other cases. 2nd session.

Sec. 7. If any person entitled to the possession of any estray shall not appear and substantiate his title Amendment. 3rd session.

thereto, and pay the charges thereon, within six months from the time when said notice is filed with the county auditor, as provided for in this act, such estray shall be sold at the request of the taker-up, by the sheriff or any constable of this county, at public auction, upon first giving public notice thereof in writing, by posting up the same in three of the most public places in the precinct, when such estray may have been taken up at least ten days before such sale; and the taker-up may bid thereon at such sale; and after deducting all the lawful charges of the taker-up, as aforesaid, and the fees of the sheriff or constable, which shall be the same as on an execution, the remaining proceeds of such sale shall be deposited in the county treasury, to be applied to the common school fund of said county.

2nd session. SEC. 8. If any person shall, without the consent of the taker-up, take away any stray taken up pursuant to the provisions of this act, without first paying all the lawful charges incurred in relation to the same, he shall be held liable to the taker-up for the full value of such stray, and may be proceeded against, as in an action for debt, before any court having competent jurisdiction.

Ibid. SEC. 9. If any taker-up of any estray shall neglect to cause the same to be advertised, or a notice thereof to be posted up, or if he shall neglect to procure the appraisal of any stray, which shall be of the value of five dollars or more, or if he shall move or cause the same to be moved beyond the bounds of the county where taken up, or if he shall neglect to perform any of the duties required of him by this act, he shall be precluded from acquiring any right of property in such stray, and from receiving any damages or charges for keeping the same, and he shall, moreover, forfeit and pay into the county treasury, a sum equal to the value of such stray, to be sued for and recovered by the county treasurer, in the name of the county, and the amount so recovered applied to the common school fund of the county.

Ibid. SEC. 10. If the taker-up of estray property shall convert the same to his own use, before the title thereto shall vest in him according to law, or if he shall knowingly and wilfully violate any of the provisions of this act, such person, so offending, shall be fined in any sum not exceeding five hundred dollars and not less than double the value of such estray property; *provided*, that in case such estray or estrays are work animals, they may be used by the taker-up in the same manner as though he were the owner thereof, and the amount of the value of such use shall be deducted from the charges attaching to such estray.

SEC. 11. This act shall take effect and be in force from and after its approval by the governor.

APPROVED *December* 22, 1864.

AN ACT

FIXING THE AGE OF MAJORITY.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. All male persons of the age of twenty-one years, and all females of the age of eighteen years, and who are under no legal disability, shall be capable of entering into any contract, and shall be, to all intents and purposes, held and considered to be of lawful age.

SEC. 2. This act shall take effect and be in force from and after its approval by the governor.

APPROVED *January* 6, 1864.

AN ACT

TO PREVENT THE SALE OF ARDENT SPIRITS, FIRE-ARMS, OR AMMUNITION TO INDIANS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Sale of liquor, etc., to Indians, penalty for.
2. Jurisdiction.
3. Witnesses, who may be,

Sale of liquor, etc., to Indians, penalty for.

SECTION 1. Any person who shall, after the passage of this act, sell, barter, give, or in any manner dispose of, any spirituous or malt liquor to any Indian or Indians; or any fire-arms or ammunition of any description whatever to any hostile Indians within this Territory, shall be deemed guilty of a misdemeanor, and upon due conviction thereof, before any court of competent jurisdiction, shall be fined in any sum not exceeding five hundred dollars, or be imprisoned in the county jail for any term not exceeding six months, or by both such fine and imprisonment, in the discretion of such court.

Jurisdiction.

SEC. 2. Justices of the peace, within their respective counties, are hereby declared to have complete jurisdiction within the meaning of this act.

Witnesses, who may be.

SEC. 3. White persons and Indians of lawful age are hereby declared to be competent witnesses in the trial of all causes embraced within the meaning of this act.

SEC. 4. This act to take effect and be in force from and after its approval by the governor.

APPROVED *January* 25, 1864.

AN ACT

PRESCRIBING THE MODE OF MAINTAINING AND DEFENDING POSSESSORY ACTIONS ON THE PUBLIC LANDS IN THIS TERRITORY.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Who may settle on public domain.
2. Claim what to contain.
3. Claim, how described; shall be recorded.
4. Shall improve, how and when.
5. Action for possession, plaintiff to prove.

SECTION 1. Any person being a citizen of the United States, or having in accordance with law declared his intention to become a citizen, now occupying and settled upon, or who may hereafter occupy or settle upon, any of the public lands of the United States in this Territory, for the purpose of cultivating or grazing the same, may commence and maintain any action for interference with, or injury to, his possession of such land against any person or persons interfering with or injuring the same; *provided*, that if such land contains mines of any of the precious metals, the possession or claim of the person or persons occupying the same for the purposes aforesaid shall not prevent the working of such mines by persons desiring to work the same, as fully as if no such claim for agricultural or grazing purposes had been made thereon; *provided*, further, that this act shall not be so construed as to allow persons who have, subsequent to the location of land for agricultural or grazing purposes, to go upon such lands for the purpose of mining without either first paying the owner thereof

Who may settle on public domain.

the value of any growing crops they may destroy, or giving bonds for the same; this provision not to extend to any crops planted upon any lands subsequent to their location for mining purposes; and, *provided*, further, that this act shall not be construed to authorize the maintainance of any claim upon lands which at the commencement of any such action, may have been selected by the United States, and reserved for any purpose.

Claim, what to contain.

SEC. 2. Every claim, to enable the holder to maintain any action as aforesaid, shall contain not more than one hundred and sixty acres of lands; shall be in a compact form, and in no place less than eighty rods in width, and so distinctly marked that the boundaries thereof may be easily traced.

Claim, how described; shall be recorded.

SEC. 3. Every such claim shall be accurately described in a written notice, which shall be recorded in the office of the recorder of the county wherein the claim shall be situated, in a book to be kept by him for that purpose, together with an affividavit of the claimant setting forth:

First—That such claim does not embrace more than one hundred and sixty acres of land;

Second—That he or she holds no other claim under the provisions of this act;

Third—That to the best of his or her information and belief, no part of said land is claimed under any existing adverse title.

Shall improve, how and when.

SEC. 4. Within ninety days after the date of such record, said claimant shall improve the land so recorded, unless the same shall have been previously done by him, or some one through whom he claims, by putting such improvements thereon as shall partake of the realty to the value of two hundred dollars, and shall continue to occupy and to cultivate or graze the same or some portion thereof, either in person or by his agent or employe, and no persons shall be entitled to maintain any such action unless he shall have complied with all the provisions of this act.

Action for possession, plaintiff what to prove.

SEC. 5. In any action for the possession of, or for any injury done to, a lot or parcel of land, situated in any city, town, or village on the public lands in this Territory, the plaintiff shall be required to prove either an actual inclosure of the whole lot claimed by him, or the erection of a dwelling-house, or other substantial building, on some part thereof, by himself or some person through whom he claims, and proof of such building, with or without enclosure, shall be sufficient to hold such lot or parcel to the bounds thereof, as indicated by the plat of such city, town, or village, if there be one, and if there be no such plat, then to hold the same, with its full width and extent from and including such building to the nearest adjacent street, where the intervening space shall not have been previously claimed by adverse possession.

SEC. 6. This act to take effect and be in force from and after its approval by the governor.

APPROVED *December* 10, 1864.

AN ACT

ENTITLED AN ACT PERMITTING COUNTIES TO SUE AND BE SUED.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Each county shall continue a body politic, for what purposes, etc.
2. On whom papers in suit must be served.
3. Judgments to be liens.
4. Auditor to draw warrant, etc.
5. How to be paid.
6. Property deemed to be property of county, when,

Each county shall continue a body politic, for what purposes, etc.

SECTION 1. That each county shall continue to be a body politic and corporate, for the following purposes, to-wit: To sue and be sued, to purchase and hold for the use of the county, lands lying within its own limits, and any personal estate, to make all necessary contracts, and to do all other necessary acts in relation to the property and concerns of the county.

On whom papers in suit must be served.

SEC. 2. When a county is party defendant in an action, the service of all necessary papers, shall be made upon the county treasurer of said county, and the chairman of the board of county commissioners.

Judgments to be liens.

SEC. 3. All judgments duly rendered against counties, shall be a lien against the property real and personal of said county.

Auditor to draw warrant.

SEC. 4. Upon presentation of the judgment, duly certified by the clerk of the district court, under seal, the county auditor of the county against whom the judgment was obtained, shall draw his warrant upon the current expense fund of said county, for the amount of judgment and costs.

SEC. 5. Said warrant shall be valid and paid in the order of the registry, and in no other manner.

How to be paid.

SEC. 6. All real or personal estate heretofore conveyed, or which shall hereafter be conveyed by any form of conveyance, and duly acknowledged and recorded to the inhabitants of any county, or to the county treasurer, or to any committee, or other persons for the use of such county, shall be deemed the property of such county, and all such conveyances shall have the same force and effect as if they had been made to the inhabitants of such county by their corporate name.

Property deemed to be property of county, when.

SEC. 7. This act to be in force and take effect from and after its passage.

APPROVED *January* 10, 1871.

AN ACT

TO PROVIDE FOR THE BETTER PROTECTION AND DISBURSEMENT OF PUBLIC MONEYS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

Section 1. Duty of officers entrusted with collection of money.
2. Ibid.
3. Public moneys to be kept in possession of officer, etc.
4. Penalty for violation of act.
5. Repealing clause.

Duty of officers entrusted with the collection of moneys.

SECTION 1. It shall be the duty of every officer entrusted by any law of this Territory with the collection of any of the public moneys of this Territory, or the public moneys of any county, or city and county, or township, or district, or municipal corporation in this Territory, to pay over in coin such portion of said public moneys as he shall have received in coin or in gold dust, or such portion thereof as he shall have received in gold dust, and in paper currency such portion as he shall have received in paper currency, to the officer, person or persons, entitled by the laws of this Territory to receive the same.

Ibid.

SEC. 2. It shall be the duty of every officer entrusted by any law of this Territory with the custody and disbursement of any of the public moneys of this Territory, or the public moneys of any county, or city and county, or township or district, or municipal corporation in this Territory, to keep and disburse in coin so much of said public moneys as he shall have received in coin, and so much as he received in gold dust, and in paper currency so much thereof as he shall have received in said currency; and none but clean, merchantable gold dust shall be received by any tax collector and paid over to any treasurer, and none but like gold dust shall be paid out by any treasurer, and all tax collectors and treasurers shall be responsible on their official bonds, to any person aggrieved by the payment of adulterated or dirty dust.

Public moneys to be kept in possession of officer, etc.

Sec. 3. All officers mentioned in section one and two of this act, are hereby required to keep all public moneys, while the same are in their custody or under their control, in their own possession, and they are hereby forbidden and prohibited from placing the same, or any part thereof, in the possession of any banker or banking firm, or any person or persons whomsoever, to be used by them, for any purpose whatever, for their own benefit, or for the benefit of any other person or persons; and they are further forbidden and prohibited from loaning, borrowing, or in any other manner using said public moneys, or any part thereof, or permitting any other person or persons to use the same, or any part thereof, either with or without interest, or any other compensation, for any purpose whatever, except as provided by the laws of this Territory; and they are further forbidden and prohibited from changing or converting said public moneys, or any part thereof, from coin into any paper currency, or from gold dust or paper currency into any other paper currency, gold dust or coin.

Penalty for violation of act.

Sec 4. If any of the officers aforesaid shall violate any of the provisions of this act, they shall be deemed guilty of felony, and, upon conviction thereof in a court of competent jurisdiction, shall be punished by imprisonment in the territorial prison for a period not less than one year nor more than five years, or by fine not less than five hundred dollars nor more than ten thousand; *provided*, nothing in this act shall be so construed as to prevent any of said officers, except the territorial treasurer, from making special deposits for the safe keeping of the public moneys.

Repealing clause.

Sec 5. All acts and parts of acts in conflict with the provisions of this act, are hereby repealed; *provided*, that nothing in this act contained shall be so construed as to release any officer herein named from any liability or penalty which he may have incurred under existing laws.

Sec. 6. This act shall take effect from and after the approval of the governor.

Approved *January*, 11, 1866.

AN ACT

TO PROCURE MAPS OF THE SURVEYED TOWNSHIPS OF IDAHO TERRITORY.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Board of commissioners authorized to procure, when.

Board of commissioners to procure, when,

SECTION 1. The board of commissioners of each county, upon the application of six bona fide settlers, are hereby authorized to procure maps of the surveyed townships in their respective counties from the territorial controller, and to order the warrants to be drawn upon the county treasurer for the purchase thereof; *provided*, however, that the said county commissioners shall not allow more than five dollars for each full township map, and not more than three dollars for each fractional township map.

SEC. 2. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 3. This act to be in force and take effect from and after its passage.

APPROVED *January* 13, 1871.

AN ACT

FOR THE BETTER PROTECTION OF THE RIGHT OF TRANSIT ON SNAKE RIVER.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

Section 1. Free for navigation. Not to be obstructed.

Free for navigation. Not to be obstructed.

Section 1. That the river known as Snake river, be and it is hereby, declared free for navigation by steamboats, schooners, crafts and rafts of every description, and shall not be obstructed or molested by the building or erecting of bridges, booms, or other structures of any kind, between the points known as Olds' ferry and Salmon falls, on said river.

Sec. 2 This act to be in force from and after its approval by the governor.

Approved *January* 11, 1866.

AN ACT

ENTITLED AN ACT, TO PREVENT CHILDREN UNDER CERTAIN AGE FROM ENTERING SALOONS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Children forbidden to enter saloons.
2. Liability of saloon keeper.
3. Fines, disposition of.

Children forbidden to enter saloons.

SECTION 1. That all children between the age of five and sixteen years, are hereby expressly forbidden from entering or frequenting any saloons of this Territory, of any character or description, unless accompanied by their parents or employes.

Liability of saloon keepers.

SEC. 2. All proprietors of saloons, and employes of the same, are hereby expressly forbidden to allow children between the ages above referred to, in section one of this act, from entering any saloons, and should any owner or proprietors violate the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction, he or they shall be fined by a court of competent jurisdiction, in a sum of not less than ten nor more than twenty-five dollars.

Fines, disposition of.

SEC. 3. All fines collected under the provisions of this act shall be paid into the county treasury, and be apportioned to the school funds.

SEC. 4. This act to take effect and be in force from and after its passage.

APPROVED *January* 13, 1871.

AN ACT

TO PROVIDE FOR THE ORGANIZATION AND MAINTENANCE OF HISTORIC, SCIENTIFIC, AID, OR EDUCATIONAL, AND OTHER LITERARY SOCIETIES.

Be it enacted by the Legislative Assembly of the Territory of Idaho of follows:

SECTION 1. Corporations may be created.
2. Number of person necessary to form association.
3. Copy of certificate to be filed and certified.
4. When corporation complete, powers of.
5. Directors, terms of.
6. Elections when may be held.
7. Directors, meeting of how called.
8. Power to contract debts limited.

Corporations may be created.

SECTION 1. Corporations may be created for the organization and maintenance of historic, scientific, aid, or educational, and other literary societies, designed to promote the diffusion of useful knowledge.

Number of persons necessary to form association.

SEC. 2. Any five or more persons, whether male or female, who may desire to form an association, for any one or more of the purposes specified in the preceding section, may make, sign and acknowledge before some officer, authorized by law to take acknowledgment of deeds, and file in the office of the secretary of the Territory, and also file a copy thereof in the recorder's office of the county in which the meeting is held, and the general business of such association or society is to be transacted, a certificate, in which shall be stated the corporate name of the society or association; the objects for which the same shall be formed; the time of its existence, which shall not exceed ten years; the number of directors, and their names, who shall manage the business of the society or association for the first six months; and the name of the city, or town, in which the principal business of the association is to be transacted. The directors of any such society or association shall not be more than ten nor less than three.

Copy of certificate to be filed and certified.

SEC. 3. A copy of any certificate of incorporation, filed in pursuance of this act, and certified by the secretary of the Territory, or the recorder of the county in which the same may be filed, as provided in the foregoing section, shall be received in all courts, and places, as *prima facie* evidence of the matter therein stated.

When corporation complete, powers of,

SEC. 4. When the certificate, and copy thereof, shall have been filed, as hereinbefore provided, the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate, in fact and in name, by the name stated in the certificate, and by that name have succession for the period limited, and shall have power:

First—To sue and be sued, and prosecute and defend in any court;

Second—To devise, adopt and use a seal, and change the same at pleasure;

Third—To purchase, accept by grant, gift, devise, hold, sell and convey, such real and personal property, or estate, as the purpose of the society or association shall require;

Fourth—To appoint or elect, and remove such officers, agents and servants, as the business of the society or association may require; to define their powers, prescribe their duties, and fix their compensation;

Fifth—To make by-laws, not inconsistent with the constitution of the United States, and the organic act of this Territory, for the transaction of the business of such society or association, the management of its property, the regulation of its affairs, the administration and expulsion of its members, and generally for the transaction of all such business as may be within the scope of its organization and original design.

Directors, term of.

SEC. 5. Directors, after the expiration of the term first selected and named in the certificate of such organization, shall be annually elected by the members of said society or association, at such time and place, and upon such notice, and in such mode as may be directed by its by-laws.

Election, when may be held.

SEC. 6. If it should happen at any time that an election of directors shall not be made on the day designated by the by-laws of the society or association, the corporation shall not for that reason be dissolved, but it shall be lawful on any other day to hold an election for directors in such manner as shall be provided in the by-laws of the society or association, and all acts of the directors shall be valid and binding on the society or association until the election and qualification of their successors. A majority of the whole number of directors shall form a board for the transaction of business, and a majority of the whole number of members of the society or association, represented in person or proxy, shall be necessary to transact business, and any decision of the majority of the persons assembled as a board, or as a meeting of the society or association, shall be valid.

Directors, meeting of, how called.

SEC. 7. The meeting of the directors shall be called by notice signed by a majority of the persons named as directors in the certificate, setting forth the time and place of the meeting, which notice shall be given personally to each director, or published at least one week in some newspaper of the county, where such meeting is to be held.

Power to contract debts limited.

SEC 8. No such association or society shall ever contract indebtedness which in the aggregate shall exceed the sum of one thousand dollars over and above the assets of such association or society, and no corporation or association organized under this act shall, by any implication or construction, be deemed to possess the power of issuing bills, notes or other evidence of debt, for circulation as money.

SEC. 9. This act shall take effect and be in force from and after its approval by the governor.

APPROVED *January* 12, 1866.

AN ACT

TO PROVIDE FOR THE INCORPORATION OF THE GRAND AND SUBORDINATE LODGES OF FREE AND ACCEPTED MASONS, THE GRAND AND SUBORDINATE LODGES OF THE INDEPENDENT ORDER OF ODD FELLOWS AND THE GRAND AND SUBORDINATE LODGES OF THE I. O. G. T., IN THIS TERRITORY.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. To be deemed bodies corporate and politic, from when.
2. Shall have power to sue, etc.
3. Corporate powers vested on board of trustees, etc.
4. Certificate of election to be given to trustees, etc. Lodge dissolved, property to revert.
5. Trustees, duties of.

To be deemed bodies corporate and politic, from when.

SECTION 1. The Grand Lodge of the Ancient Order of Free and Accepted Masons, whenever the same shall be duly instituted within the Territory of Idaho, and the subordinate lodges of said Order, now in existence in said Territory, or which may hereafter be instituted; and the Grand Lodge of the Independent Order of Odd Fellows, and the subordinate lodges of said Orders now in existence or which may be instituted in said Territory; and the Grand Lodge of the Independent Order of Good Templars, and the subordinate lodges of said Order now in existence or which may hereafter be instituted in said Territory, shall be deemed bodies corporate and politic; the Grand lodges from the date of their organization and by their corporate names; the lodges subordinate thereto from the date of their charters from such Grand Lodges as may have duly issued or may hereafter issue the same in accordance with the rules and regulations governing said Orders.

Shall have power to sue, etc.

SEC. 2. The said Grand Lodges, and their subordinate lodges, shall have power in their corporate capacity:

First—To sue or be sued, in any court of competent jurisdiction;

Second—To make and use a common seal, and to alter the same at pleasure;

Third—To acquire by purchase, bequest or donation, directly or indirectly, hold in perpetuity, sell and convey such property, real or personal, as may be deemed necessary by the proper authorities thereof, to carry out the charitable purposes of said Grand Lodges, or the subordinate lodges thereof; or for the establishment of schools, or the endowment of colleges, hospitals or cemeteries, in said Territory;

Fourth—To provide for the indebtedness of said Grand and subordinate lodges, by the issuance of bonds, or promissory notes, under the seal of such lodge, and signed by the board of trustees thereof; *provided*, that at no time shall the indebtedness of any Grand or subordinate lodge, by the issuance of such bonds, or promissory notes, exceed the sum of fifteen hundred dollars;

Fifth—To elect or appoint according to the respective regulations and customs, not less than three, nor more than fifteen, persons, to serve as trustees, who shall have charge of all real and personal property belonging thereto, and transact all business relative thereto;

Sixth—And, generally, be entitled to all the rights, privileges and immunities usually had or enjoyed by such corporations.

Corporate powers vested in board of trustees,

SEC. 3. The corporate powers of said Grand and subordinate lodges shall be vested in a board of trustees elected or appointed as provided in section one of this act; said board being subject to such rules and regulations as may be adopted according to the usages and customs of said Orders, for the government of said board of trustees. They shall hold office until their successors are appointed or elected, and the certificate filed, as provided in section four of this act. Vacancies in the board of trustees shall be filled as provided by the regulations of said Grand or subordinate lodges. Said trustees shall give such bonds as may be required of them, conditioned for the faithful performance of their duties.

Certificate of election to be given to trustees, etc.

SEC. 4. Upon the election or appointment of trustees, as provided in this act, a certificate of such election or appointment shall be executed by the person or persons making the appointment, or the judges holding the election, duly acknowledged before a competent officer, and shall be filed and recorded in the office of the recorder of the county in which the subordinate lodge is situated, or in the case of the Grand Lodge, in the office of the territorial secretary. Whenever any subordinate lodge hereby incorporated, shall be dissolved by its own act, or the forfeiture of its charter, according to the rules, regulations, constitution, or customs of the Grand Lodge to which it is subordinate, the property, real and personal, belonging to said subordinate lodge, shall revert to and become the property of the Grand Lodge of which it was a subordinate lodge, subject to the conditions of any bequest or grant, under or through which said subordinate lodge became the owner of said property; *provided*, that all just and equitable indebtedness of said subordinate lodge shall be paid before said reversion, and that the said Grand Lodges shall not be liable for any indebtedness of their subordinate lodges.

Trustees of. SEC. 5. It shall be the duty of the said boards of trustees, annually, to make a full report of all property, real and personal, held in trust by them, and the condition of the corporation, to such Grand or subordinate lodges; a copy of which shall be filed in the office in which their certificates of election or appointment has been filed, with an affidavit of the truth of said reports.

SEC. 6. This act to take effect and be in force from and after its approval by the governor.

APPROVED *January* 9, 1866.

AN ACT

FOR THE RELIEF OF INSOLVENT DEBTORS, AND THE PROTECTION OF CREDITORS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Insolvent debtor may be discharged, how.
2. Petition what to state.
3. Schedule to accompany petition, what to contain.
4. Oath of petitioner.
5. Order and Certificate of judge.
6. What property to be set aside.
7. Books, etc., to be deposited with clerk.
8. Notice to issue.
9. Order of judge, stay of proceedings, exception.
10. Assignees to be appointed.
11. Assignees to deposit with clerk statement of deliberation.
12. Bond of assignees.
13. Petition of assignee to sell property.
14. Assignee to deposit funds. Suits prior to surrender to be transferred.
15. Dividends declared, duty of assignee.
16. To ascertain funds on hands, motion for.
17. Assignees refusing, etc., to render accounts, duty of court.
18. If creditors refuse to attend meeting, proceedings; exception.
19. Pay of assignees.
20. Assignee when opposition made by creditors.
21. Court to hear proofs.
22. Fraud, right of creditors to question.
23. Verdict of jury for fraud, effect of.
24. In case no fraud, insolvent to be discharged.
25. Insolvent guilty of fraud, penalty for.
26. Discretion of judge may approve, when.
27. Bankrupts concealing property, what deemed.
28. Fraudulent conveyances, effect of.

SECTION 29. Ibid.
30. When debtors denied benefits of act.
31. Ibid.
32. False schedule, effect of.
33. Must apply for in person.
34. Property after surrender exempt from seizure in hands of assignees.
35. Judge to appoint attorneys for absent creditors.
36. Where no property to surrender, etc., or insufficient to pay debts, proceedings on.
37. Property disclosed in schedule to be delivered to assignee; refusal, penalty for.
38. Account of assignees to be verified by oath.

Insolvent debtor may be discharged, how.

SECTION 1. Every insolvent debtor may be discharged from his debts, as hereinafter provided, upon executing an assignment of all his property, real or personal, or mixed, for the benefit of all his creditors, and upon compliance with the several provisions of this act; *provided*, said assignment shall be made *bona fide* and without fraud. The district court only shall have jurisdiction in the subject matter herein contained.

Petition what to state.

SEC. 2. Such insolvent debtor shall petition the judge having jurisdiction within the place of his domicil, or usual residence, which petition shall briefly state the circumstances which compel him to surrender his property to his creditors, and shall conclude with a prayer to make a cession of his estate, and to be discharged from his debts, in pursuance with the provisions of this act.

Schedule to accompany petition, what to contain.

SEC. 3. The debtor shall annex to said petition his schedule, that is to say, a summary statement of his affairs, with a list of losses he may have sustained, giving the name of his creditors if known, the amount due to each creditor, and the cause and nature of such indebtedness, and when it accrued, and a statement of any existing judgment, mortgage, collateral or other securities for the payment of any such debt. Said schedule shall also contain a full, complete and perfect inventory of all his property real, personal and mixed of all causes in action, debts due, or to become due, and all moneys on hand of such insolvent; and said schedule shall also contain a full statement of all incumbrances existing upon the property of the insolvent. The said debtor shall, as near as possible, estimate the property by him surrendered, and set forth in the schedule at its true cash value.

Oath of petitioner.

SEC. 4. The said schedule shall be signed by the debtor, and be by him sworn to before the judge having jurisdiction of failure, in the following words, to-wit:

"I, A. B., do, in the presence of Almighty God, truly and solemny swear, that the schedule now delivered by me doth contain a full, perfect and true discovery of all the estate, real and personal, and mixed, goods and effects to me in any way belonging, all such debts as are to me owing, or to any person or persons in trust for me, and all securities and contracts whereby any money may hereafter become payable, or any benefit or advantage accrue to me, or to my use, or to any person or persons in trust for me; that I have no lands, money, stock or estate, reversion or expectancy, besides that set forth in my schedule; that I have in no instance created or acknowledged a debt for a greater sum than I honestly and truly owed; that I have not directly nor indirectly sold or otherwise disposed of in trust or concealed, any part of my property, effects, or contracts; that I have not in any way compounded with my creditors, whereby to secure the same. or to receive or to expect any profit or advantage therefrom, or to defraud or deceive any creditor to whom I am indebted in any manner whatsoever. So help me God."

Order and certificate of judge.

SEC. 5. The judge receiving such petition, schedule and affidavit, shall make an order requiring all the creditors of such insolvent, except mortgages and attaching creditors, to show cause, if they can, why an assignment of the insolvent's estate should not be made, and he be discharged from his debts; said schedule being signed and sworn to by the petitioner, the judge shall certify the same, and cause it to be filed in the office of the clerk of the court, in the county where the assignment was made, there to remain for the information of the creditors.

What property to be set aside.

SEC. 6. The insolvent debtor, on a surrender of his property, shall include and set forth in his schedule, his whole estate, and all such property as may be by law exempt on execution from seizure and forced sale; and it shall be the duty of the judge having jurisdiction of the case, to exempt and set apart, for the use and benefit of said insolvent, such real and personal property as he is by law authorized to retain to his own use, or that of his family.

Books, etc., to be deposited with clerk.

SEC. 7. The insolvent shall, either before or on the day appointed for the meeting of the creditors, deliver to the court all the commercial or other books he may have kept, which books shall be deposited in the clerk's office of said court. Said insolvent shall also deliver to the court at the same time, all vouchers, notes, bonds, bills, securities, or other evidences of debt, in any manner relating to, or having any bearing upon, or connection with, the property surrendered by said debtor, and all such papers or securities shall be deposited in the clerk's office of said court, and the clerk shall hand them over, together with the books of the insolvent, to the assignees who may be appointed.

Notice to issue.

SEC. 8. The judge granting the order for the meeting of the creditors, shall direct the clerk of the court to issue a notice calling the creditors of the insolvent to be and appear upon a specified day, not less than thirty nor more than forty days from the first publication of said notice, before said judge, either at chambers or in open court, as the said judge shall order, to show cause why the prayer of the alleged insolvent should not be granted. Said notice shall be published at least thirty days in a newspaper printed in the county in which the application is made, if there be one; if there be none, then in a newspaper printed nearest to such county.

Order of judge staying of proceedings; exception.

SEC. 9. When issuing the order for the meeting of the creditors, the judge shall order that all proceedings against the debtor shall be stayed, except proceedings for a foreclosure of a mortgage or other liens, or of attachment creditors; *provided*, however, that the said stay of proceedings shall not prevent the judge who shall have granted it, from appointing a receiver to take possession of all property of the debtor for the benefit of all his creditors, subject to the rights of all mortgagees, attaching creditors and lien holders, whose liens are perfected as required by law, if one or more of his creditors, his agent or attorney in fact, shall apply for such appointment, and swear that he has reason to believe, and does believe, that the debtor may avail himself of the stay of proceedings and keep his property from his creditors, if no cause sufficient in the judgment of the court, shall have been shown why the debtor should not have the benefit of this act, and shall produce satisfactory proof of the facts on which his affidavit is founded.

Assignees to be appointed.

SEC. 10. At the meeting of the creditors, the said creditors having certified on oath that their claims are legitimate and true, shall proceed to the appointment of one or more assignees, not exceeding three. In appointing assignees the opinion of the majority of said creditors, in sums or in claims, shall prevail. At such meeting any creditor may be represented by his duly authorized agent or attorney in fact.

Assignees to deposit with clerk statement of deliberations.

SEC. 11. When the assignee, or assignees, shall have been duly appointed in the meeting of the creditors, and the surrender of the property shall have been duly accepted of, it shall be the duty of said assignees to deposit in the clerk's office, of the court who shall have issued the order for a call of the creditors, a certified statement of the deliberations of said creditors on the appointment of said assignees.

Bond of assignees.

SEC. 12. The judge shall require from the assignees a bond with one or more good and sufficient sureties, on which bond the parties therein shall be liable jointly and severally for the amount thereof, conditioned for the faithful performance of the duties devolving upon said assignees. The amount of such bond shall be determined by the majority of creditors. Should not the creditors so determine, the amount of said bond shall be fixed by the court having jurisdiction of the failure.

Petition of assignee to sell property.

SEC. 13. The assignee shall apply by petition to the court, who shall have ordered a meeting of the creditors, to be authorized to sell at public auction, and to the best and highest bidder for cash, all the insolvent debtor's property, of whatsoever nature or kind, and said assignee shall give at least three weeks public notice, in the same manner as notice for the meeting of creditors, of all sales of the property of said insolvent; giving at the same time a full description of the property to be disposed of; *provided*, however, that if any of the property surrendered be of a perishable nature, the assignee shall be authorized to sell the same, by giving at least seven days notice of such sale, by publication of notice of such sale, as in sale on execution.

Assignee to deposit funds. Suits prior to surrender to be transferred.

SEC. 14. The assignees shall deposit all funds belonging to the failure, in their joint names, so that nothing can be drawn without the consent of all. Said funds shall remain inviolable, and shall never be loaned, used or mixed with the personal affairs of the assignees; and finally the said assignees shall make a distribution of the proceeds of the property of the insolvent, agreeable to the directions of the court. Said assignees may sue and be sued, either as plaintiffs or defendants, in everything which respects the rights and actions which may belong to the insolvent, or which may concern the mass of the creditors. All suits brought against the insolvent anterior to his surrender of property, before the courts of other counties, shall be transferred to the court having jurisdiction in the county in which said insolvent shall have presented his schedule, and may be continued, on motion and notice, against his assignees, except suits for foreclosure of mortgages or other liens and of attaching creditors.

Dividends declared duty of assignee.

SEC. 15. Whenever a dividend shall be declared, the assignee shall make out a statement containing the names of the several creditors, mentioning the sums which are due them respectively, and the said statement shall besides contain the *pro rata* sums to be divided among all the creditors. Said assignees shall deposit said statement in the clerk's office of the court, who shall order that notice be given to the creditors in the same manner as for the meeting, that they show cause, within fifteen days next following the publication, why the said statement should not be accepted, and the distribution made agreeable to its contents.

To ascertain funds on hand, motion for.

SEC. 16. Two or more creditors may at any time make a motion to know if the assignees have funds in their hands, and the said assignees shall be required to present their accounts, and if they have funds they shall distribute them without delay.

Assignee refusing, etc., to render accounts, duty of court.

SEC. 17. Should the assignees refuse or neglect to render their accounts, as required by the preceding section, or to pay over a dividend, when they shall have, in the opinion of the court, sufficient funds for that purpose in their hands, the court shall immediately discharge such assignees from their trust, and shall have power to appoint others in their place. The assignees so discharged shall deliver to those appointed by the court, all the funds, property, books, vouchers and securities belonging to the insolvent, without charging any commission or expenses thereon, and shall also be condemned to pay to the new assignees, for the benefit of the mass of the creditors, twenty per cent. in addition to the amount of funds in their hands.

If creditors refuse to attend meeting, proceedings; exception.

SEC. 18. If, on the day appointed for the meeting, the creditors, although duly summoned, do not attend, or refuse to appoint one or more assignees, it shall be lawful for the judge, before whom said meeting may take place, to authorize the sheriff of the county to receive the surrender of the property offered by the debtor and to perform in every respect the functions of assignee, and for the faithful performance of said trust he shall be responsible on his official bond; *provided*, that if any of the creditors should choose to take that charge, the judge shall appoint said creditor for that purpose, upon said creditor giving bond, with good and sufficient security, proportioned to the value of the property, committed to his charge.

Pay of assignees.

SEC. 19. The assignees, collectively, shall be entitled to charge and receive for their services, to wit: Ten per centum upon a sum not exceeding ten thousand dollars; eight per centum on sums above ten thousand dollars, and not exceeding thirty thousand dollars; six per centum on sums above thirty thousand dollars, and not exceeding sixty thousand dollars; and four per centum upon all sums exceeding sixty thousand dollars; *provided*, that said commission be allowed only upon such net sums of money as shall actually come to their hands or be distributed by them. The mass of creditors shall in no manner be liable for fees of counsel of the insolvent debtor in conducting the surrender of his property.

Assignee when opposition made by creditors.

SEC. 20. That in case, after the appointment of said assignees, any one of the creditors of the insolvent debtor should deem necessary to oppose it, on the ground of some fraud having been committed by the said insolvent debtor, or if the appointment not having been legally made, he shall, within ten days next following the appointment of said assignees, lay before the court which has already taken cognizance of the case, his written opposition, stating specially the several facts of nullity of the said appointment, or of fraud by him alleged against the insolvent debtor; whereupon, in case of accusation of fraud, after having received the said insolvent debtor's answer, the court shall order a jury to be summoned, of not less than six men, to be summoned in the same manner as juries are summoned in the district court, for the purpose of deciding on the said accusation.

Court to hear proofs.

SEC. 21. On the day, or at the term appointen in such order or any subsequent day or term, the court shall proceed to hear the proofs and allegations of the parties; and before any other proceedings be had, shall require proof of the publication of the notice, as herein provided.

Fraud, rights of creditors to question,

SEC. 22. Upon such accusation of fraud, the creditor who shall have brought the same, shall have the right to interrogate the insolvent debtor on oath, and put to him such written questions as to the state of his affairs, and the several transactions in which he may have been engaged anterior to his failure, as he shall think proper; and the insolvent shall answer in writing to the said interrogatories, in a pertinent and distinct manner, and every equivocal answer on his part shall be construed against him.

Verdict of jury for fraud, effect of.

SEC. 23. If the jury summoned for the purpose of deciding on the accusation of fraud brought against such insolvent debtor, declare, in their verdict, that said insolvent has been guilty of fraud, the said debtor shall forever be deprived of the benefit of the laws passed for the relief of insolvent debtors in this Territory.

In case no fraud, etc.

SEC. 24. If the accusation of fraud brought against the debtor is declared to be ill-founded, or if there be no opposition to the surrender of his property, and provided said surrender has been made according to the provisions of this act, said debtor shall be released and fully discharged from any and all debts until then contracted, and contracted after the passage of this act, and from any judicial proceeding relative to the same; *provided*, always, that said insolvent debtor shall be released and discharged only from such debts and liabilities as he shall have set forth and named in his schedule.

Insolvent guilty of fraud, penalty for.

SEC. 25. Any insolvent debtor who shall be found guilty of fraud, as aforesaid, shall forever be deemed incapable of holding any office of trust or profit under the government of this Territory; shall morever be liable to be prosecuted and punished as a perjurer,if he should be convicted of having foresworn himself in any of the declarations he may have made, agreeable to the provisisons of this act; and, if convicted of fraud, he shall be sentenced by the court to suffer imprisonment, at hard labor, in the territorial prison, for a term not less than six months nor more than two years.

Discretion of judge. may approve, when.

SEC. 26. If the judge before whom the accusation of fraud is brought or an opposition to the appointment of assignees is made, thinks that the interests of the mass of creditors of the insolvent may suffer by a delay of the approval of the appointment of the assignees, it shall be lawful for said judge, all opposition notwithstanding, to approve previously the said appointment, if he finds it has been made agreeable to law.

Bankrupts concealing property, what deemed.

SEC. 27. That all persons shall be considered as fraudulent bankrupts who shall be convicted of having concealed their property with the intention to keep it from their creditors, as also those who shall be convicted of having concealed or altered their books or papers with the same intention.

Fraudulent conveyance effect of.

SEC. 28. That every insolvent debtor shall also be considered as a fradulent bankrupt who shall be convicted of having passed sham deeds for the purpose of conveying the whole, or any part of his property, and depriving his creditors thereof; or of having knowingly omitted to declare any of his property, rights or claims, in his schedule; or of having purloined his books, or any of them; or of having altered, changed, or made them anew, to an intent to defraud his creditors; or of having alienated, mortgaged or pledged any of his property; or of having committed any other kind of fraud to the prejudice of his creditors.

Ibid.

SEC. 29. If any debtor shall be convicted of having, at any time within three months next preceding his failure, sold, engaged or mortgaged any of his goods and effects, or of having otherwise assigned, transferred or disposed of the same, or any part thereof, or confessed judgment in order to give a preference to one or more of his creditors over the others, whereby to receive any advantage in anticipation of his failure, to the prejudice of his creditors, he shall be debarred the benefit of this act.

When debtors deemed benefits of act.

SEC. 30. All insolvent debtors owing, or accountable in any manner for public funds or property of whatever nature or kind; all unfaithful depositories; all such as refuse or neglect to pay up all funds received by them as bankers, brokers, commission merchants; or for money, goods or effects received by them in a fiduciary capacity, shall be denied the benefits of this act.

Ibid.

SEC. 31. If, after the presentation of his petition, the insolvent shall sell, or in any manner transfer or assign any of his property; or collect any debts due him, and shall not give a just and correct account of the property so sold or transferred, and the moneys so collected, and pay the same over to the assignees, within ten days of their appointment, said debtor shall not receive the benefit of this act.

False schedule, effect of.

SEC. 32. Whenever any insolvent debtor has had the benefit of this act, if thereafter, at any time, it is made to appear that he has concealed any part of his property or estate, or given a false schedule, or committed any fraud under the provisions of this act, it is hereby declared that he has forfeited all benefit and advantage which he would otherwise have had by virtue of this act, and he cannot avail himself of any of its provisions in bar to any claim that may be instituted against him.

Must apply for in person.

SEC. 33. No person can apply for, or receive the benefit of, this act, through an agent or attorney in fact.

Property after surrender exempt from seizure in hands of assignees.

SEC. 34. From and after the surrender of the property of the insolvent debtor, all property of such insolvent debtor shall be fully vested in his assignee or assignees, for the benefit of his creditors, and shall not be liable to be seized, attached, taken or levied upon, by virtue of any execution issued against the property of said insolvent, and the assignees who may be appointed shall take possesion of, and be entitled to claim and recover, all the said property, and to administer and sell the same as herein provided; subject, however, to the rights of mortgagees, lien-holders, and prior attaching creditors, whose prior rights shall in nowise be affected by the provisions of this act.

Judge to appoint attorney for absent creditors.

SEC. 35. If there be any creditors residing without the limits of this Territory, the judge shall appoint an attorney to represent them, but the fees of said attorney shall in no case be paid by the mass of the creditors, but shall be levied on the amount of the sums which shall be recovered for the account of such non-resident creditors, at the rate of ten per centum; *provided*, that in no case shall the whole fees be allowed to counsel appointed on behalf of said creditors exceed the sum of three hundred and fifty (350) dollars.

Where no property to surrender, etc., or insufficient to pay debts, proceedings on.

SEC 36. In case the debtor who applies for the benefit of this act should have no property to surrender to his creditors, or if the appraised value of the property exhibited in his schedule should not amount to more than one-third of his debts, in case he should already have received the benefit of this act during the year next preceding, the judge before whom application is made shall not admit him to the benefit of this law, unless it be proven to the said judge by affidavit, sworn and subscribed to by two creditable and disinterested witnesses, that the debtor has really experienced the losses by him stated, and that the said losses may have reduced him to the situation in which he finds himself; *provided*, all legal mortgages and liens *bona fide* existing on such property, at the time of the surrender as aforesaid, shall remain good and valid, and may be enforced in the same manner as though such no surrender had been made.

Property disclosed in schedule to be delivered to assignee. Refusal, penalty for.

SEC. 37. All the goods, titles and claims which the insolvent debtor shall have disclosed in his schedule, shall be delivered up to the assignees, as soon as they shall have been appointed; and in case the debtor should refuse to deliver up the goods, titles, effects, or estate in his possession, the judge shall oblige to that delivery, either by ordering the sheriff to seize the said property, to be by him delivered up to the assignees, or causing said insolvent to be imprisoned until the said delivery shall be effected.

Account of assignees to be verified by oath.

SEC. 38. The assignee or assignees appointed under this act, shall make a true account of all disbursements made by them in discharge of their duties as assignee or assignes which shall be verified by the oath of such assignee or assignees and shall deliver the same to the judge having jurisdiction of the subject matter, and such judge shall, in writing, certify such part or parts of the same as he shall deem to be just and necessarily expended by said assignee or as-assignees in the discharge of their duty, which amount, so allowed, shall be paid out of the property of such insolvent debtor.

Sec. 39. No assignment of any insolvent debtor, otherwise than is provided in this act, shall be legal or binding upon creditors.

Sec. 40. This act shall take effect and be in force from and after its approval by the governor.

Approved *January* 11, 1866.

AN ACT

RELATING TO THE DISCOVERY OF GOLD AND SILVER QUARTZ LODES, AND OF THE MANNER OF THEIR LOCATION.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

Seciton 1. Discovery, right of.
2. What constitutes claim, etc.
3. Location of, how to be defined.
4. Two or more persons may join in locating.
5. Claim to be recorded, where and how.
6. Quartz claims when considered real estate.
7. Conveyance of, how made.
8, Notices, penalty for destroying.
9. Testimony relative to, how perpetuated.
10. Tunnel what constitutes claim.
11. Location, how made.
12. To be recorded.
13. Labor, claimant to perform how much.
14. Repealing clause.

Section 1. That any person or persons who may hereafter discover any quartz lead or lode, shall be entitled to one claim thereon, by right of discovery, and one claim each by right of location; *provided*, that no person shall be entitled to hold more than one claim by right of location on any one lead or lode, and that no Discovery, right of.

person be entitled, or have the right to locate, or to hold by location, or to have recorded, any claim or claims, on any lead or lode, unless he be a resident or inhabitant of this Territory.

What constitutes claim, etc.

SEC. 2. That any quartz claim shall consist of two hundred feet in length, along the lead or lode, by one hundred feet in width, being fifty feet on each side of said lead or lode, covering and including all dips, spurs and angles within the bounds of said claim; and also, the right of drainage, tunneling, and such other privileges as may be necessary to the working of said claim; *provided*, that nothing in this act shall be so construed as to give any claimant, or claimants, any right to any separate or distinct lodes, other than the one claimed, running the width of said claim, or to obstruct any subsequent claimants in working and improving such distinct ledge; and the center of the ground between such ledges shall be the dividing line between such claimants.

Location of how to be defined.

SEC. 3. The locator, or locators, of any quartz claim or claims, on any lead or lode, shall, at the time of locating said claim or claims, place a substantial stake, not less than three inches in diameter, at each end of the claim so located; *provided*, that where two or more claims are located together, and recorded in one notice, then the aforesaid stakes shall be placed at each end of the claim so located in one notice. On said stake at each end of said claim or claims, shall be placed a notice in writing, and said notice shall contain the date of the location of said claim or claims, the name or names of the locator or locators, the name of the lead or lode on which said claim or claims are located, the number of feet so claimed by each of said locators, the distance to the nearest end of said claim or claims from the discovery stake; the direction, as nearly as possible, from the discovery stake, and the direction said claim or claims extend in, as nearly as may be, from the point designated at its, or their, commencement; and where more than one person join in one notice in locating said claims, shall state the actual number of feet claimed and the portion of the ground so claimed by each person so locating.

Two or more persons may join in locating.

SEC. 4. Two or more persons may locate or take claims together in a body, by joining in a notice specifying the number of claims so located, and the name of each person so joining in such location, being written under the notice; but the claims so located shall not exceed two hundred feet for each person so locating; and said claims shall, on said notice, be numbered and designated as segregated claims, and shall designate the position of the said segregated ground in said claims, so located, in one notice, including, when necessary, a discovery claim, except where it may be necessary to include a claim by right of discovery, and the notice shall then state in whose name or names said discovery claim is located. Persons so joining in one notice shall be considered as tenants in common, so soon as the work hereinafter required to be done shall be fully finished and performed. The work hereinafter required to be performed on a quartz claim, to entitle the locator or his assigns to hold the same as real estate, may be performed on any one of the claims so held under one notice; *provided*, it be equal in value to one hundred dollars for each and every two hundred feet held under one notice, including the discovery claim; but when any claims have been located by two or more persons, in one notice, so soon as the work as required by this act, has been performed on said claim or claims, to-wit: one hundred dollars worth of work for each and every two hundred feet included in the notice locating said claims, the said claimants shall be deemed tenants in common, and shall be subject to all the rights, privileges and benefits, responsibilities and liabilities, of tenants in common.

Claim to be recorded where and how,

SEC. 5. All claims shall be recorded in the recorder's office of the county in which such lead or lode shall be discovered, by filing with the recorder a copy of the notice placed on the ledge or lode, or a similar notice, containing the name of the ledge or lode, the name or names of the locators, the number of feet claimed, the date of location, the direction in which the ledge or lode runs, the district and county in which the ledge or lode may be, and the general distance and direction from some known or initial points, and any other fact or statement by which the ledge may be identified, known or found. Said notice shall be filed within ten days after the location of any claim, or claims, on any ledge or lode, and the person or persons named in the notice, shall, each one for himself, and not one for the other, within three days after filing the notice, appear in person at the recorder's office, and authorize the recording of the same, in their name or names; and no record shall be legal or valid without the personal appearance of the person or persons named in the notice. At the recorder's office, the recorder shall record the same, in a book kept for that purpose, and called the book of quartz claims, to which there shall be complete and full duplicate index kept by the recorder, and the recorder shall be entitled to receive a fee of twenty-five cents for filing each notice, one dollar for each quartz claim recorded, and twenty-five cents for indexing each name in notice recorded, with the name or names thereon, *provided*, that if said lead or lode be more than thirty miles from the county seat of said county, then the time for recording the same may extend to fifteen days. And all persons recording any claim, or claims, shall take an oath before the recorder of said county, that said claim, or claims, have not been heretofore located according to law, or, if so located, that the said claim, or claims, have been abandoned, or forfeited by non-fulfillment of the provisions of this act.

Quartz claims when considered real estate.

Sec. 6. Quartz claims located and recorded in accordance with the provisions of this act, shall entitle the person or persons so locating and recording, to hold the same as real estate, to the use of himself, his heirs and assigns, *provided*, that within one year from and after the date of recording, he or they shall cause to be performed, one hundred dollars worth of work for each and every claim of two hundred feet of said lead or lode, said work to consist of the following: The stripping the lead or lode, sinking of shafts, excavating of tunnels, obtaining machinery, and repairing material for working said lead or lode in good faith.

Conveyance of how made.

Sec. 7. Conveyances of quartz claims shall require the same formalities, and shall be subject to the same rules of construction, as the transfer and conveyance of real estate.

Notices, penalty for destroying.

Sec. 8. Any person or persons who shall wilfully and maliciously tear down or destroy any notice posted on quartz claims, or tear up or destroy any stakes marking quartz claims, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be fined in any sum not less than twenty-five dollars, or not exceeding one hundred dollars, or by not less than thirty days, nor more than six months imprisonment in the county jail, or by both such fine and imprisonment, and all justices of the peace, in their respective counties, shall have jurisdiction of such offenses.

Testimony relative to h w perpetuated.

Sec. 9. Any person or persons desiring to preserve and perpetuate testimony, as to the sufficiency of the amount of work done on any claim or claims, to entitle him or them to hold them as real estate, according to the provisions of section six of this act, may take two disinterested persons to view such work, who shall carefully examine the same, immediately after which they shall go before the county recorder, or other officer by law authorized to administer oaths in the county, and take and subscribe an affidadit containing, first, a description of the location of the claim or claims on which the work is performed, the character and value of such work, and the date when they received the same, which affidavit shall be filed by the county recorder, and carefully preserved. Such affidavits, or certified copy of the same, under the certificate of the county recorder, who has the the custody of the original affidavit or affidavits, shall, in any court of this Territory, be *prima facie* evidence of the character and amount of labor performed on the claim or claims which are described in such affidavit or affidavits. The recorder shall receive a fee of fifty cents for filing and preserving the affidavits required by this action.

Tunnel what constitutes claim.

SEC. 10. Any person or persons who may desire to run a tunnel into any hill or mountain, for the purpose of discovering or working mineral bearing quartz leads, or lodes, shall be entitled to hold five hundred feet each way from the line of the tunnel, on every lead or lode so discovered; *provided*, the said lode has not been previously claimed and held according to law; and said person or person shall also be entitled to hold three hundred feet square at the entrance or entrances of said tunnel or tunnels for building, deepening, or other necessary purposes; *provided*, further, that nothing in this act shall be so construed as to invalidate the vested rights of other persons.

Location how made.

SEC. 11. The manner of locating tunnels shall be by posting a notice or notices at the entrance or entrances of the tunnel, describing the line of the tunnel and of the dumping ground, which notice shall be signed by all the parties interested, stating the interest of each person.

To be recorded.

SEC. 12. A copy of said notice shall be recorded in the office of the county recorder within ten days from the time of location, and the recorder shall receive two dollars for recording said notice.

Labor. claimant to perform how much.

SEC. 13. The parties claiming any tunnel shall, within one year from the time of location, perform, or cause to be performed, five hundred dollars worth of labor on said tunnel; and when a quartz lead or lode, belonging to such tunnel company, shall be struck, it shall become real estate, and any person or persons interested in any tunnel who shall fail to perform his or their proportion of the labor required by this act, within the time specified, shall forfeit all his or their rights in said tunnel; and those who do perform their portion of said labor in the required time, shall acquire all the rights of such delinquent parties, and shall proceed immediately to perform the requisite amount of labor, and any tunnel site becoming vacant by non-fulfillment of the law, shall not be subject to re-location by the same parties.

Repealing clause.

SEC. 14. That an act, entitled "An act relating to the discovery of gold and silver bearing quartz ledges, and of the manner of their location," approved Decem-thirteenth, A. D., eighteen hundred and sixty-four, and all other acts, or sections of acts, in conflict with this act, be and the same are hereby repealed.

SEC. 15. This act to take effect and be in force from and after its approval by the governor.

APPROVED *January* 12, 1866.

AN ACT

TO PROVIDE FOR KEEPING UP AND MAINTAINING THE TERRITORIAL LAW LIBRARY OF IDAHO, AND FOR EXPENSE THEREOF.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

Section 1. The sum of one hundred and fifty dollars is hereby appropriated annually, to be expended by the judges of the supreme court of Idaho, for the purpose of purchasing new and valuable editions of law reports and the text books in the law for the use of the territorial library of Idaho, and for the payment of postage and expressage on the same.

Sec. 2. The controller is hereby authorized to draw his warrant or warrants in such sums as shall be specified in the order of the judges of the supreme court, or any one of them for the cost or price of such law book or books as they shall order to be purchased for the use of the territorial law library; *provided*, that the sum shall not exceed in any one year the amount of one hundred and fifty dollars.

Sec. 3. The territorial librarian shall place such books as are purchased under this act in the territorial law library, and shall not permit such book or books to be taken out of the territorial law library except for the use of the judges of the supreme or district court, and for use in the courts during trials.

Sec. 4. This act shall take effect and be in force from and after its passage.

Approved *January* 15, 1875.

AN ACT

CONCERNING PERSONS IN CUSTODY AND UNDER SENTENCE OF IMPRISONMENT

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Convicts may be hired for labor.
2. Convicts hiring, powers and responsibilities of.
3. Order and delivery of prisoners for labor.
4. Chain gang repealed.

Convicts may be hired for labor.

SECTION 1. The board of commissioners in each county shall have power and are hereby authorized to cause persons confined in the county jail under sentence of imprisonment to labor upon any public or private work, the county receiving the benefit of the hire or labor.

Persons hiring, powers and responsibilities of.

SEC. 2. The persons in whose charge the prisoners shall be placed by the board of commissioners shall have in regard to such prisoners while in their custody, all the powers of jailors, and shall be subject to the same responsibilities, and be in like manner amenable to the grand jury.

Order and delivery of persons for labor.

SEC. 3. Upon the presentation of a written order from the board of county commissioners, signed by the members of such board or by their president, it shall be the duty of all sheriffs and their deputies, jailors and others having the custody of such prisoners to deliver the same into the charge of the person or persons in said order named and authorized to receive them.

Chain gang repealed.

SEC. 4. That the act entitled "An act to authorize and empower the sheriffs of Boise and Ada counties to employ the prisoners in the Boise and Ada county jails, and so form the same prisoners into a chain gang," approved January 12th, A. D., 1866, be and the same is hereby repealed.

SEC. 5. This act shall take effect in thirty days after its passage.

APPROVED *January* 4, 1869.

AN ACT

TO PROVIDE FOR THE KEEPING AND ACCOMMODATION OF TERRITORIAL PRISONERS.

SECTION 1. U. S. penitentiary to be territorial prison.
2. Territorial prisoners, contract for keeping.
3. Amendment. Approved January 8, 1873.
4. To who prisoners delivered. Fees of officer.
5. Governor to have prisoners transferred.

U. S. penitentiary to be territorial prison.

SECTION 1. That the penitentiary building erected by the United States, in the county of Ada, in the Territory of Idaho, be and the same is hereby declared to be the general penitentiary and territorial prison of the Territory of Idaho, wherein shall be confined for reformation and punishment, and employed at hard labor, all offenders who have been, or shall hereafter be convicted and sentenced according to law, to imprisonment at hard labor in the territorial prison.

Territorial prisoners, contract for keeping,

SEC. 2. And, whereas, by the laws of the United States, the said penitentiary is placed in charge of the United States authorities, and provision is made whereby persons offending against the laws of the Territory may be confined therein at the expense of the Territory, therefore, it is hereby the duty of the governor of this Territory to contract and arrange to and with the United States, for the reception and keeping of all territorial prisoners.

Amendment. Approved January 8, 1873.

SEC. 3. It shall be the duty of the governor, at the close of each month, to certify to the territorial controller the sum due the United States, in currency, for the keeping, boarding, clothing, washing and medical attendance of the territorial prisoners for such month, according to contract, and the controller, upon said certificate and order of the governor, shall draw a warrant upon the prison fund in favor of the United States marshal for the district of Idaho, for a sum sufficient to pay said contract price in currency, said warrant in each case to be regulated by the current market value of prison fund warrants; *provided*, that in no case shall the value of such warrants be rated at a sum less than seventy cents to the dollar.

To whom prisoners delivered fees of officer.

SEC. 4. All persons sentenced to imprisonment in the territorial prison shall be delivered by the sheriff of the proper county, or his deputy, to the person in charge of said prison, and the officers delivering such prisoners shall be entitled to receive the following fees for such services, and no more, to-wit: for conveying, guarding, and boarding one prisoner, eighty cents per mile, and for each additional prisoner, fifty cents per mile, and it shall be the duty of the controller to audit all of said accounts, and draw his warrant upon the territorial prison fund for the amount.

Governor to have prisoners transferred.

SEC. 5. It shall be the duty of the governor to have all territorial prisoners, now confined in the Boise county jail, transferred to said penitentiary so soon as the prison is ready for their reception.

SEC. 6. All territorial prisoners now in Boise county jail shall there remain under such rules as the legislature may provide, until their removal in accordance with the provisions of this act.

SEC. 7. From and after the removal of the territorial convicts from Boise county jail to the territorial prison, all acts and parts of acts, in reference to the care and safe keeping of territorial convicts, passed prior to the sixth session of the legislative assembly of the Territory of Idaho, are hereby repealed.

SEC. 8. This act to take effect and be in force from and after its passage.

APPROVED *January* 13, 1871.

AN ACT

ENTITLED "AN ACT DEFINING THE DUTIES OF CONSTABLES."

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. When to deputize,
2. Violating section 1. penalty.
3. Unlawful charge, penalty.
4. Who have jurisdiction.

When to deputize,

SECTION 1. No constable of any county of this Territory shall appoint or deputize any person to perform any of the duties of his office except in cases of riots or making arrests.

Violating section one penalty.

SEC. 2. Any constable violating the provisions of section 1 of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars and not exceeding one hundred dollars, or imprisonment not exceeding thirty days in the county jail, or both, at the discretion of the court.

Unlawful charge, penalty,

SEC. 3. Any constable who shall be guilty of an unlawful charge in the performance of his duties shall be punishable by a fine of twenty-five dollars for each and every offence.

Who have jurisdiction SEC. 4. Justices of the peace shall have full jurisdiction of all cases arising under this act.

SEC. 5. This act to be in force from and after its approval by the governor.

APPROVED *January* 9, 1869.

AN ACT

IN RELATION TO A TERRITORIAL LAW LIBRARY.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 4. Amendment sixth session.
5. Amendment seventh session.

SECTION 1. That all moneys heretofore paid or hereafter to be paid to the treasurer of the Territory "for the use of the territorial library fund" under "an act in relation to attorneys and counselors at law," shall be set apart for a territorial law library fund.

SEC. 2. That the territorial treasurer shall require the several clerks of the district courts and the clerk of the supreme court to make a full report of the names of all the attorneys admitted or licensed to practice in said several courts of this Territory, the time when, and the amount of fees paid for such license to each of said clerks, if any has been so paid, showing whether any such fees are now in the hands of the present clerks or their predecessors; and if any such moneys are found to be in the hands of either of the clerks of the district court or the clerk of the supreme court or either of their predecessors, then the territorial treasurer is required to collect by suit, if necessary, all of such moneys so paid to the several clerks and retained by them or their predecessors, if any such moneys shall be found to be in their hands; and the clerk of the supreme court and the several clerks of the district courts and their predecessors are hereby required to pay over all moneys collected by them or in their hands for the use of the territorial library fund to the treasurer of the Territory.

Sec. 3. The territorial treasurer is hereby authorized and required to expend all moneys now in his hands or that may hereafter come into his hands, applicable to said territorial law library fund under the direction of the judges of the supreme court, for the purchase of such law books and law reports as they may from time to time direct.

Amendment. 6th session.

Sec. 4. The secretary of Idaho is hereby authorized to provide a suitable room or place to safely keep said territorial library, and also provide tables and chairs proper to furnish the said library room, *provided*; the cost of the same shall not exceed the sum of one hundred and fifty dollars.

Amendment 7th session.

Sec. 5. The secretary shall keep said library room open on all proper days, from ten o'clock, A. M., to three o'clock, P. M., for the accommodation of the citizens of Idaho Territory; *provided*, that the whole cost and expense to the Territory shall not exceed the sum of two hundred and fifty dollars per annum; and the controller is hereby authorized to draw his warrant for said amount in monthly payments, and the treasurer is hereby required to pay the same out of any money in the treasury not otherwise appropriated; and, *provided*, further, that no allowance shall be made for fuel, lights or stationery.

Sec. 6. This act to take effect and be in force from and after its passage.

AN ACT

DEFINING THE DUTIES AND FEES OF COUNTY OFFICERS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

Section Approved February 4, 1864.
2. Ibid.
3. Ibid.
4. Approved December 22, 1864.
5. Ibid.
6. Ibid.
7. Ibid.
8. Ibid.
9. Approved January 13, 1871.
10. Approved Jannery 13, 1871.
11. Ibed.
12. Approved February 4, 1874.
13. Ibid.
14. Ibid.
15. Ibid.
15. Ibid.
16. Ibid.
17. Ibid.
18. Ibid.
19. Ibid.
20. Ibid.
21. Ibid.
22. Ibid.
23. Ibid.
24. Approved January 10, 1875.

Approved February 4, 1864.

SECTION 1. The clerk of the district court shall in person attend each term of the district court held in his county, and shall perform all the duties prescribed in section six of this act, so far as the same are not inconsistent with the duties of his office, and shall be subject to the same penalties as the county recorder, for any act of omission or commission, as prescribed in section two of this act.

SEC. 2. If any clerk shall knowingly and wilfully do any act contrary to the duties of his office, or shall knowingly and wilfully fail to perform any act or duty required of him by law, he shall be deemed guilty of a misdemeanor, and on conviction, shall be fined in any sum not exceeding two thousand dollars, and may be removed from office. Ibid.

SEC. 3. No clerk or deputy clerk shall be permitted to practice as an attorney or counselor at law, in any action or proceeding in any court whatever; for violating the provisions of this section, he shall be deemed guilty of a misdemeanor. Ibid.

SEC. 4. The clerk of the district court may appoint one or more deputies, who shall have the same powers, in all respects, as their principals. The appointment shall be in writing, and shall be filed in the office of the recorder of the county, and may be revoked at will by writing filed in the same office. Approved December 22, 1864.

SEC. 5. All processes issued by any deputy clerk shall be issued in the name of the principal. Ibid.

SEC. 6. He shall, in person, or by deputy, attend each term of court held in his district. He shall take charge of, and safely keep, all books, papers, and records, which may be filed or deposited in his office. He shall issue all writs and processes required to be issned from the court of which he is clerk. He shall enter under the direction of the court all orders, judgments, and decrees, proper to be returned, and shall keep such books of record as may be required by law or by the rules of the court. Ibid.

SEC. 7. Before entering upon the discharge of his duties he shall give bond to the Territory, in a penalty to be fixed by the judge of the district Ibid.

SEC. 8. For any wrongful act, or willful omission to perform any duty imposed on him by law, he shall be liable on his bond to any person injured. Ibid.

FEES OF CLERK OF THE DISTRICT COURT.

SEC. 9. The clerk of the district court may lawfully charge, demand, and receive the following fees for services rendered, in discharging the duties imposed on him by law: For entering each suit on the register of actions, and making the necessary entries therein during the progress of the trial, for each folio, thirty cents; for issuing every summons, attachment, writ of injunction, or other original writ, or process, fifty cents; for issuing Approved January 13, 1871.

subpœna, for each witness, twenty-five cents; for filing each paper, twenty-five cents; for entering of record every motion, rule, order, default, nonsuit, or discontinuance, fifty cents; for entering every cause on the calendar, and making a copy thereof for the bar, for each term of court, fifty cents; for calling and swearing every jury, one dollar; for receiving and entering each verdict of a jury, fifty cents; for entering every final judgment and each preceding record, or paper, not otherwise provided for, for each folio, twenty-five cents; for making and filing judgment roll, fifty cents; for every certificate under seal, fifty cents; for issuing every commission to take testimony, including certificate and seal, one dollar; for taking down testimony or depositions, including oath, certificate and seal, for each folio, thirty cents; for issuing every execution, or other final process, one dollar; for issuing every decree or order of sale, including certificate and seal, for each folio, twenty-five cents; for receiving and filing remittitur and accompanying papers, from the supreme court, twenty-five cents; for taking each bond required by law, fifty cents; for acknowledgment of deed or other instrument, including seal, for each name, fifty cents; for swearing witness, twenty-five cents for taking affidavit, including jurat, twenty-five cents; and with seal attached, when required, fifty cents; for entry of each case in judgment docket, fifty cents: for entering satisfaction of judgment, fifty cents; for filing and entering transcript of judgment from justices' court, fifty cents; for all services not herein enumerated, and of him required or which he shall be called on to perform, such fees as are herein allowed for similar services; for each day's attendance upon the court when in session, to be paid out of the county treasury, four dollars; for the trial of each issue, when the charge is felony, five dollars; for the trial of each issue, when the charge is misdemeanor, three dollars. He shall receive no other fees whatever in a criminal action, except for copies of papers and taking testimony, for each folio, thirty cents; for final papers of naturalization, the sum of five dollars for such papers. Said sum shall include all services of said clerks in swearing witnesses, making minutes, recording, certifying, and issuing such papers under seal; *provided* that all fees paid clerks of the district courts in Idaho Territory, in all cases, be paid in the lawful money of the United States; *provided*, further, the fees of all territorial, county and precinct officers, be made payable in the legal money of the United States.

Approved January 6, 1873.

FEES OF JUSTICES OF THE PEACE.

SEC. 10. Every justice of the peace may lawfully charge, demand and receive the following fees for services rendered in discharging the duties imposed on him by law: For filing each paper, twenty-five cents; for issuing any summons, writ or process, by which action is commenced, fifty cents; for entering such cause on his docket, including all docket entries before judgment, fifty cents; for subpœna to witness, twenty-five cents; for administering an oath or affirmation, including jurat and certificate, twenty-five cents; for issuing writ of attachment or of arrest, or for delivery of property, one dollar; for entering any final judgment, for each folio, twenty-five cents; for taking and approving any bond or undertaking directed by law to be taken or approved by him, fifty cents; for taking justification to bond or undertaking, when required by law, after exception to sureties, one dollar; for swearing a jury, fifty cents; for taking deposition, per folio, thirty cents; for entering satisfaction of judgment, fifty cents; for copy of judgment, order, docket, proceedings, or paper in his office, per folio, twenty-five cents; for issuing commission to take testimony, fifty cents; for making up and transmitting transcript and papers on appeal, two dollars; for making up and transmitting papers on change of venue, including copy, certificate and order, one dollar; for issuing search warrant, fifty cents; for issuing an execution, fifty cents; for celebrating marriage and returning certificate to the recorder, three dollars; for all services and proceedings before a justice of the peace in a criminal action or proceeding, whether on examination or trial, three dollars; for taking bail after commitment, in criminal cases, fifty cents; for entering an action without process, fifty cents; for entering judgment by confession, and only on affidavit as required in the district court, in full for all services before execution, one dollar.

Approved January 13, 1871.

SEC. 11. That any officer named in this act, who shall take, exact or receive, fees or costs, other than those allowed herein, shall be deemed guilty of a misdemeanor, and punished by imprisonment in the county jail, for a period of ninety days, and shall pay to the party from whom such illegal fees or costs may have been collected, double the sum so illegally collected, and on conviction his office shall be declared vacant.

Approved January 13, 1871.

DUTIES OF COUNTY SURVEYOR.

SEC. 12. Each county surveyor, upon entering upon

Ibid.

the duties of his office, shall take the oath as prescribed by law, and give bond in the sum of two thousand dollars, or such further sum as the board of commissioners of his county may require.

Approved February 4, 1864. SEC. 13. The county surveyor may appoint such number of deputies as he may think proper, who shall severally take the oath prescribed by law, and for the faithful performance of whose duty he shall be responsible.

Ibid. SEC. 14. The certificate of the county surveyor or any of his deputies shall be submitted as legal evidence in any court in this Territory; but the same may be explained or rebutted by other evidence. No survey or re-survey hereafter made by any person except the county surveyor or his deputy, shall be considered legal evidence in any court within this Territory, except such surveys as are made by the authority of the United States, or by mutual consent of the parties.

Ibid. SEC 15. When it shall appear that the county surveyor is interested in any tract of land, the title of which is in dispute before a court, and a survey of which is necessary, the court shall direct the survey to be made by some capable and disinterested person, who shall be authorized to administer oaths, in the same manner as the county surveyor is directed to do, and shall return such survey, on oath or affirmation, and shall receive for his services the same fees as the county surveyor would be entitled to for similar services.

Ibid. SEC. 16. During a vacancy in the office of county surveyor of any county, the board of commissioners of such county may appoint some person to perform the duties of surveyor until such vacancy shall be filled in the manner prescribed by law.

Ibid SEC. 17. It shall be the duty of said surveyor, by himself or one of his deputies, to execute any survey that may be required, by order of any court, or upon application of any individual or corporation.

Ibid. SEC. 18. He shall keep a correct and fair record of all surveys made by him or his deputies, in a book to be provided by the county commissioners for that purpose, which shall be transmitted to his successors in office. He shall also number such surveys progressively, and shall preserve a copy of the field notes and calculations of each survey, endorsing thereon its proper number, a copy of which, and also a fair and accurate plat, together with the certificate of survey, shall be furnished by him to any person requiring the same, upon payment of the fees allowed by law.

SEC. 19. Any person owning or claiming lands which are divided by county lines, and wishing to have the same surveyed, may apply to the surveyor of any county in which any part of such land is situated; and on such application being made, the surveyor is authorized and required to make the survey, which shall be as valid as though such lands were situated entirely within the county for which such surveyor was chosen. Ibid.

SEC. 20. When lands, the title of which are in dispute before any court, shall be divided by a county line, the court making an order of survey may direct the order to the surveyor of any county in which any part of such lands are situated. Ibid.

SEC 21. In all surveys, the courses shall be expressed according to the true meridian, and variation of the magnetic meridian from the true meridian shall be expressed on the plat, with the year, month and day of the survey. If a party for whom the survey is made does not furnish the necessary laborers and markers, the county surveyor or his deputy may employ the necessary laborers and markers, and shall receive the reasonable hire of all assistance necessary to be employed in making the survey. Ibid.

SEC. 22. Any county surveyor who shall fail or refuse to perform any of the duties required of him by this act, shall be fined in a sum not exceeding two hundred dollars. Ibid.

FEES OF SURVEYOR.

SEC. 23. For the first mile actually run with the compass and chain, five dollars; for each succeeding mile, four dollars. For each copy of a plat and certificate, three dollars. For each lot laid out and platted in any city or town, three dollars. For recording a survey, two dollars. For calculating the quantity of every tract of land not divided, one dollar. For calculating the quantity of each division made in a tract of land, town lots excepted, one dollar. For traveling to the place of survey, for each mile, in going only, fifty cents. For ascertaining the location of every town lot in an old survey, and measuring and marking the same, three dollars. For copies and certificates, per folio, thirty cents. For erecting a monument at the corner of any survey, when required, three dollars. Expense of assistants shall be any additional charge, to be agreed upon by the parties. Ibid.

FEES OF WITNESSES.

Approved January 10, 1875.

SEC. 24. For attending in any civil suit or proceeding before any court of record, referee, commissioners, or justice of the peace, for each day, three dollars; and for traveling to the place of trial, for each mile, twenty-five cents. No person shall be obliged to testify in a civil action, unles his fees for attending have been tendered him or her, or unless he shall have not demanded the same; and no person shall be obliged to attend in a civil action or proceeding as a witness without the county in which he resides, unless the distance be less than thirty miles from his place of residence to the place of trial.

AN ACT

TO PROVIDE FOR MARKS INSTEAD OF SIGNATURES.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Mark, when valid.
2. Act to take effect, when.

Mark when valid.

SECTION 1, The signature of a party, when, required to a written instrument, shall be equally valid if the party cannot write; *provided*, the person makes his mark, the name of the person making the mark being written near it, and the mark being witnessed by a person who writes his own name upon such instrument, as a witness.

When act to take effect.

SEC. 2. This act to take effect and be in force from and after its approval by the governor.

APPROVED *January* 4, 1864.

AN ACT

DEFINING THE DUTIES AND FIXING THE SALARY OF TERRITORIAL CONTROLLER.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

Section 1. 4th session,
2. 3d session.
3. Ibid.
4. Ibid.
5, Ibid.
6. Ibid.
7. Ibid.
8. Ibid.
9. Ibid.
10, Ibid.
11. Ibid.
12. Ibid.
13 Ibid.
14. 7th session.
15. 3d session.
16. Ibid.
17. Ibid.
18. Ibid.
19. Ibid.

Section 1. The office of territorial controller is hereby created, whose powers and duties shall be such as are prescribed in this act. He shall reside and keep his office at the seat of government, and before entering upon his duties shall execute and deliver to the governor a bond to the Territory in the sum of ten thousand dollars, to be approved by him, conditioned for the faithful performance of all the duties required, or which may be required of him by law, and take an oath of office before some judge or justice of the peace within the Territory, to be endorsed on his commission, and file 4th session.

a copy thereof, together with his bond, in the office of the secretary of the Territory.

3rd session. SEC. 2. The controller is declared to be the general accountant of the Territory, and the keeper of all public account books, accounts, vouchers, documents, and all papers relating to the accounts and contracts of the Territory, and its revenue, debt, and fiscal affairs, not required by law to be placed in some other office, or kept by some other person.

Ibid. SEC. 3. It shall be the duty of the controller to digest, prepare, and report to the Legislative Assembly, at the commencement of each session;

First—A full and detailed statement of the condition of the revenues and the amount of the expenditures for the last fiscal year;

Second—A full and detailed statement of the public debt;

Third—Estimates of the revenues and expenditures for the next succeeding year;

Fourth—Such plans as he may deem expedient for the support of the public credit, for lessening the public expense, for using the public money to the best advantage, for promoting frugality and economy in public affairs, and generally for the better management and more perfect understanding of the fiscal affairs of the Territory;

Fifth—A tabular statement showing separately the whole amount of each appropriation of money made by law, the amount paid under the same, and the balance unexpended;

Sixth—A tabular statement showing separately the amount of money received into the treasury from all sources in the preceding fiscal year, the amount received from each county, and each source of revenue in each county.

Ibid. SEC. 4. It shall be the duty of the controller;

First—To adjust, audit, and settle all claims against the Territory, payable out of the treasury, except only such claims as may be expressly required by law to be audited and settled by other officers or persons;

Second—To draw all warrants upon the treasury for money, except only in cases otherwise expressly provided by law;

Third—To express in the body of every warrant which he may draw upon the treasury, the particular fund appropriated by law out of which the same is to be paid;

Fourth—To audit, settle, and adjust the accounts of all collectors of the revenue, and other holders of public money, who are required by law to pay the same into the treasury;

Fifth—To keep an account between the Territory and the territorial treasurer;

Sixth—To keep an account of the debits and credits between the Territory and the United States;

Seventh—To direct prosecution, in the name of the Territory, for all official delinquencies in relation to the assessment, collection and payment of the revenue against all persons who, by any means, become possessed of public money or property, and fail to pay over and deliver the same, and against all debtors of the Territory;

Eighth—To procure from the proper officer maps of the surveyed townships of this Territory showing the claims of all settlers and pre-emptions when they shall have proved upon the same; Amendment 7th session.

Ninth—To transmit to the county auditor of the several counties the maps of the lands embraced within their respective counties to be procured as aforesaid;

Tenth—To give information, in writing, to either House of the Legislative Assembly, whenever required, upon any subject relating to the fiscal affairs of the Territory, or touching any duty of his office;

Eleventh — To furnish offices for himself and the territorial treasurer and all books, papers, blanks, and forms required by law for the proper discharge of the duties of their offices, and a safe; *provided*, the whole amount expended shall, in no case exceed the sum of two thousand dollars per annum; and to furnish the proper forms, through the auditors of the various counties, to assessors, treasurers, sheriffs, and such auditors;

Twelfth—To perform all such other duties as may be required by law.

Sec. 5. All persons required by law to pay money directly into the treasury of the Territory, shall, unless otherwise provided, exhibit their accounts and vouchers to the controller on or before the first Monday in Nov., in each year, to be audited, adjusted, and settled; and the controller shall proceed, with ut any unnecessary delay, to audit, adjust, and settle the same, and report to the treasurer the balance found due Amendment 3rd session.

Sec. 6. If any person so required by law to pay money into such treasury shall fail to pay the amount so found due in said treasury, and produce the treasuerer's 3rd session.

receipt to the controller, within ten days after the settlement above required, the delinquent shall forfeit to the Territory the amount of his commission allowed him by law, and also two and one-half per cent. per month on the amount wrongfully withheld, to be computed from the time the same ought to have been paid until actual payment; and the controller shall charge such delinquent accordingly, and the whole amount of principal and interest may be recovered by action on the official bond of the delinquent, or otherwise, according to law.

Ibid. SEC. 7. All persons having claims against the Territory shall exhibit the same, with the evidence in support thereof, to the controller, to be audited, settled, and allowed within two years after such claims shall accrue, and not afterward; and in all suits brought in behalf of the Territory, no debt or claim shall be allowed against the Territory as a set-off but such as have been exhibited to the controller, and by him allowed or disallowed, except only in cases where it shall be proved, to the satisfaction of the court, that the defendant, at the time of trial, is in possession of vouchers which he could not produce to the controller; or, that he was prevented from exhibiting the claim to the controller by absence from the Territory, sickness, or unavoidable accident; *provided*, the controller shall, in no case, audit a claim or set-off which is not provided for by law.

Ibid. SEC. 8. The controller, whenever he may think it necessary to the proper settlement of any account, may examine the parties, witnesses, and others, on oath or affirmation, touching any matter material to be known in the settlement of such account, and for that purpose may issue writs of summons, and compel witnesses to attend before him and give evidence in the same manner and by the same means allowed by law to courts of record.

Ibid. SEC. 9. All accounts, vouchers, and documents settled, or to be settled, by the controller, shall be preserved in his office, and copies thereof, authenticated by the official seal of the controller, shall be given to any person interested therein who shall require the same.

Ibid. SEC. 10. In all cases of grants, salaries, pay and expenses, ascertained and allowed by law, found due to individuals from the Territory, when audited, the controller shall draw warrants upon the treasury for the amount in the form used in the treasury department; but in cases of unliquidated accounts and claims, the adjustment and payment of which are not provided for by law, no warrants shall be drawn by the controller, or paid by the treasurer unless the previous appropriation shall have been made by law for that purpose, nor shall the whole amount drawn for and paid under any one head ever exceed the amount due thus appropriated.

SEC. 11. If any person interested shall be dissatisfied with the decision of the controller, on any claim, account, or credit, it shall be the duty of the controller, at the request of such person, to refer the same, with the reasons of his decision, to the Legislative Assembly. **Ibid.**

SEC. 12. In all cases where the laws recognize a claim for money against the Territory, and no appropriation shall be made by law to pay the same, the controller shall audit and settle the same, and give the claimant a certificate of the amount thereof, under the official seal, if demanded, and shall report the same to the Legislative Assembly, with as little delay as possible. **Ibid.**

SEC. 13. The controller shall report to the Legislative Assembly, within ten days after the commencement of each regular session, a list of all the collectors of revenue, and other holders of public money, whose accounts remain unsettled for six months after they ought to have been settled according to law, and the reasons thereof. **Ibid.**

SEC. 14. The territorial controller shall receive a salary of fifteen hundred dollars per annum, as controller and superintendent of public instruction, to be audited by the territorial treasury, and paid by him in quarterly installments out of any money in the treasury not otherwise appropriated; and he shall receive no other compensation whatever, except the cost of necessary stationery, fuel, fixtures, lights, rent of office, and everything connected therewith for the carrying on of said controller and school superintendent's business for the Territory of Idaho; and under no claim or pretext whatever shall the territorial controller receive any other moneys for said stationery, etc., as above enumerated, for the use of said office; *provided*, the said sum therefor, shall not exceed two hundred and fifty dollars. **7th session.**

SEC. 15. All the books, papers, letters and transactions, pertaining to the office of controller, shall be open to the inspection of a committee of the Legislative Assembly, or either branch thereof, who shall examine all the controller's accounts. **3rd session.**

SEC. 16. The controller shall have power to administer all oaths required by law, in matters pertaining to the duties of his office. **3rd session**

SEC. 17. The controller shall keep a seal of office, **Ibid.**

for the authentication of all papers, writings, and documents required by law to be certified by him, and copies so authenticated and certified, of all papers and documents lawfully deposited in his office, shall be received in evidence as the original.

Ibid. SEC. 18. That all acts, and parts of acts in conflict with the provisions of this act be and the same are hereby repealed.

SEC. 19. This act to take effect and be in force from and after its passage.

APPROVED *January* 6, 1866.

AN ACT

TO ENABLE THE COURTS TO ENFORCE THE SPECIFIC PERFORMANCE OF CONTRACTS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Judgment made payable on money stipulated, exception,
2. Unliquidated damages on wha t estimated.
3. Sheriff, duty of, penalty for neglect
4. Certificate of sale what to state.
5. Kind of money purchaser entitled to receive.

Judgment made payable in money stipulated, exception. SECTION 1. In an action upon contract, express or implied, for the direct payment of money or currency, the judgment, whether the same be by default or after verdict, or upon the decision of the court or the report of a referee, shall follow the contract and be made payable in the kind of money or currency stipulated for therein, or understood by the terms thereof; *provided*, that whenever a written contract to pay in "gold coin," or its equivalent in gold dust or bars, be not performed according to the terms of said contract whether by promissory note or otherwise, it shall thereafter, at the option of the party entitled to the benefit thereof, be deemed and held to be a contract to pay gold coin only, within the meaning of this act, and may be enforced accordingly.

Unliquidated damages in what estimated.

SEC. 2. In an action for the recovery of unliquidated damages, the court, jury, or referee, who shall assess the same, shall estimate the amount thereof either in gold or silver coin of the United States, or in United States legal tender paper currency, at the option of the party prosecuting for the recovery of such damages, and the judgment thereof shall be made payable in the kind of money or currency in which such damages shall have been estimated.

Sheriff, duty of, penalty for neglect.

SEC. 3. An execution to enforce a judgment for a specified kind of money, shall require the sheriff to satisfy the same in the kind of money or currency specified in such judgment, and in case of levy and sale of the property of the judgment debtor, he shall refuse payment from any purchaser at such sale, in any other kind of money than that specified in the execution. The sheriff shall pay over according to law the kind of money recovered on such execution, and in case of neglect or refusal so to do, he shall be liable on his official bond to the judgment creditor in three times the amount of the money collected.

Certificate of sale what to state,

SEC. 4. The certificate of sale of real property on an execution to enforce a judgment for a specified kind of money, shall state the kind of money recovered on such sale, and the notice of sale shall specify the kind of money in which bids may be made at such sale, which shall be the same as that specified in the judgment, and the sheriff shall state in his returns the kind of money received.

Kind of money purchaser entitled to receive.

SEC. 5. The purchaser at a sale of real property on execution for a specified kind of money, shall be entitled to receive from the redemptioner and the redemptioners from each other, the kind of money specified in the certificate of sale before a redemption of such property can be had.

SEC. 6. This act shall take effect and be in force from and after its approval by the governor.

APPROVED *December* 3, 1864.

AN ACT

IN RELATION TO COMMON JAILS AND THE PRISONERS THEREOF.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. By whom built.
2. Commissioners to have care of, etc.
3. Sheriff to have custody, etc.
4. Amendment 6th session.
5. Sheriff defrauding prisoner, penalty.
6. Jailor to return certified list of prisoners; when failure, penalty for.
7. Persons committed by United States, what to pay.
8. Jail unsafe, prisoner may be committed where. Prisoners hired, money to be applied how.
9. Governor may order removal of prisoners, when.
10. Expense of keeping how paid.

By whom built.

SECTION 1. There shall be built, or provided, kept and maintained, in good repair, in each county, one common jail, at the expense of the county.

Commissioners to have care of, etc.

SEC. 2. The county commissioners shall have the care of building, inspecting and repairing such jail, and shall, once every three months, inquire into the state thereof, as respects the security thereof, treatment and condition of the prisoners, and shall take all necessary precaution against escape, sickness or infection.

Sheriff to have custody, etc.

SEC. 3. The sheriff shall have the custody of the jail in his county, and of the prisoners therein, and shall keep the same personally, or by his deputy, for whose acts he shall be responsible, and shall furnish all necessary sustenance, bedding, clothing, fuel and medical at tendance for the prisoners,committed to his custody, and the commissioners shall allow him reasonable compensation out of the county treasury, not exceeding two dollars per day, for the support of all prisoners confined on criminal process.

Amendment 6th session.

SEC. 4. The sheriff may appoint a jailor, who, in case of the absence or disability of the sheriff, shall receive a *per diem* of three dollars per day, when there is a prisoner or prisoners in the jail of his county, who shall have the care and custody of such prisoner or prisoners therein, and at his option he may do and perform the duties of jailor, for which service he shall receive three dollars per day, in addition to such compensation as may be allowed for feeding and clothing such prisoners; *provided*, that in case a jailor is employed, the sheriff shall not receive any *per diem* for services as such jailor; and, *provided*, further, that no *per diem* shall be allowed to either sheriff or jailor when there is no prisoners in the jail of his county. This act shall not apply to the counties of Ada and Boise.

Sheriff defrauding prisoner, penalty.

SEC. 5. If any sheriff or jailor shall defraud any prisoner of his allowance, or shall not allow reasonable allowance and accommodation, he shall forfeit fifty dollars for each offense, to be recovered by an action of debt by the county commissioners, for the use of the county.

Jailor to return certified list of prisoners, when failure, penalty for.

SEC. 6. Every jailor, five days prior to the opening of each term of the district court, in the district in which his county is situate, shall return to the commissioners of his county a certified list of all the prisoners then in his custody, with the time and causes of their confinement, and the length of the term for which they were committed; and he shall, also, return to said commissioners, within five days after the close of said court, the name, and cause, and term of commitment of every prisoner committed during said term of court; and any jailor, who shall neglect to make such return, for every such neglect shall pay a fine not exceeding fifty nor less than twenty dollars, to be imposed at the next succeeding term of said court, on information of said commissioners of such neglect; and such fine shall go the county.

Persons committed by U. S. what to pay.

SEC. 7. Persons may be committed under the authority of the United States to any jail upon payment of the expenses of supporting such prisoners five dollars per month to the county for the use of the jail, and all legal fees of the jailor; and the sheriff shall receive such prisoners, and subject them to the same discipline and treatment, and be liable for any neglect of duty as in case of other prisoners; but the county in no case shall be liable for any escape.

Jail unsafe, prisoner may be committed where. Prisoners hired, money to be applied how

SEC. 8. Whenever any prisoner, under conviction for any criminal offence, shall be confined in any jail for any liability to pay any fine, forfeiture, or costs, or to procure sureties, the district court, upon satisfactory evidence of such inability, may, in lieu thereof, confine such person in the county jail at the rate of two dollars per day until the forfeiture or costs so imposed shall be satisfied; and, in such case, the sheriff may hire out, or put to labor, such person or persons, and shall charge the earnings of said prisoners to himself, for the sustenance of said prisoners; any surplus that may accrue from such labor, shall be paid into the county treasury to the credit of said prisoner.

Governor may order removal of prisoners, when.

SEC. 9. Whenever, from any sufficient cause, the sheriff shall think it expedient that the prisoners be removed from the jail of his county, on application in writing to the governor of the Territory, by the sheriff and commissioners of such county, the governor may order said prisoners to be removed to some other jail, anywhere within the Territory, there to be detained in the same manner and by the same process as in the jail from whence they were removed, until remanded back, by a similar process, or discharged according to law.

Expense of keeping, how paid,

SEC. 10. All the expense of removing and maintaining prisoners, incurred under the preceding section, shall be defrayed by the county from which they were so removed.

SEC. 11. All acts and parts of acts inconsistent with this act are hereby repealed; and this act shall take effect from and after its approval by the governor.

APPROVED *January* 13, 1864.

AN ACT

CONCERNING THE OFFICIAL BONDS OF OFFICERS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

Section 1. Official bonds, how approved and filed.
2. Ibid.
3. Ibid.
4. Penalty for not filing bond.
5. Bond to be recorded.
6. Bond, form of.
7. Sureties to justify, etc.
8. Judgment not to exceed special liability.
9. On whom bond obligatory.
10. Ibid.
11. Who may bring suit.
12. To become void, when.
13. Ibid.
14. Copy of bond evidence.
15. To whom act applies.
16. When sureties remove, duty of county commissioners.
17. Ibid.
18. When district attorneys' bond insufficient, proceedings.
19. When office vacated.
20. Additional bond, nature of.
21. Original bondsmen when not discharged.
22. Officer and sureties to whom liable.
23. Separate judgments, when execution may issue.
24. Sureties paying—how may recover.
25. Sureties, number of.
26. Appointment to fill vacancy, duty of officer.
27. How sureties may be released.
28. Ibid.
29. Copy of notice to be served on officer.
30. Notice, number of days required.
31. Sureties not to be released from damages,
32. Execution, etc., when held.
33. Bonds given by trustees, etc.

SECTION 34. When action commenced for Territory, proceedings.
35. County recorder, duty of.
36. Repealing clause.
37. All officers to file new bonds, when.
38. Bonds of justices, etc, by whom fixed.

Official bonds how approved and filed. SECTION 1. The official bonds of officers shall be approved and filed as follows, to-wit: The official bond of the territorial treasurer, territorial controller, territorial superintendent of public instruction shall be approved by the governor, filed and and recorded in the office of the territorial secretary. The official bond of each district attorney shall be approved by the judge of the district, filed and recorded in the office of the district clerk of said district. The official bonds of sheriffs, coroners, county clerks, assessors, tax collectors, public administrators, superintendents of public schools, county surveyors, justices of the peace, and constables, shall be approved by the board of county commissioners and filed and recorded in the office of the recorder of their respective counties.

Ibid. SEC. 2. The approval of every official bond shall be endorsed thereon and signed by the board or officer approving the same.

Ibid. SEC. 3. No officer with whom any official bond is required to be filed, shall file and take charge of such bond until approved as prescribed by law.

Penalty for not filing bond. SEC. 4. If any person elected or appointed to any office shall perform any of the duties thereof without having executed and filed in the proper office any bond required of him by law, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding one thousand dollars, and his office be declared vacant.

Bond to be recorded. SEC. 5. It shall be the duty of every officer with whom said bonds shall be filed, carefully to record, keep and preserve the same, and give certified copies thereof, sealed with the seal of his office, to any person demanding the same, upon being paid the same fees as are allowed by law for certified copies of papers in other cases.

Bond, form of. SEC. 6. All official bonds required by law of officers shall be in form, joint and several, and made payable to the Territory of Idaho, in such penalty, and with such conditions as shall be required by law.

Sureties to justify, etc SEC. 7. In all cases where official bonds are required, or may be required, from territorial, district or county officers, the officer or officers whose duty it is or may be to approve such bonds, shall not accept or approve any such bonds, unless each of the sureties shall severally justify before an officer authorized to administer oaths, as follows:

First—On a bond given by a territorial or district officer, that such surety is a resident and freeholder or householder within this Territory, and on a bond given by a county officer, that such surety is a resident and freeholder or householder within such county, or within an adjoining county;

Second—That such surety is worth the amount for which he becomes surety, over and above all his debts and liabilities, in unincumbered property situated within this Territory, which may be levied upon, and is not exempt from execution and forced sale; *provided*, that the board of county commissioners of each and any county in this Territory may at any time, upon or their own or any other motion, call, by written notice to that effect, upon any one or more of the sureties upon the official bond of any of the county officers of their county, for a further justification of his or their responsibility, notwithstanding any former justification thereof, and notwithstanding any approval of such bond or bonds. Whenever it shall be shown by affidavit of a credible witness, duly filed or presented to any judge, board, officer, or officer or person whose duty it is to approve the official bond of any officer, that the sureties thereon, or any of them, have, since such bond was approved, died, removed from the Territory, become insolvent, or from any other cause have become incompetent or insufficient sureties on such official bond, it shall be the duty of said judge, board, officer or person, to issue a citation to such officer, requiring such officer, on a day therein named, not less than five nor more than ten days after date, to appear and show cause why such office shall not be vacated, which citation shall be served, and return thereof made, as in other cases. If said officer shall fail to appear and show good cause why such office should not be vacated, on the day named, or shall fail to give ample additional surety, it shall be the duty of such judge, board, officer or person, to make an order vacating such office, and the same shall be filled by election or appointment, as provided by law.

Judgment not to exceed special liability.

Sec. 8. When the penal sum of any bond hereafter to be given amounts to more than one thousand dollars, the sureties may become severally liable for portions not less than five hundred dollars of such penal sum, making in the aggregate at least two sureties, for the whole penal sum. And if any such bond shall become forfeited, an action may be brought thereon, against all or any number of the obligors, and judgment be entered against the obligors, either jointly or severally, as they may be liable; *provided*, that judgment shall not be entered against a surety severally bound, for a greater sum than that for which he is specially liable by the terms of said bond. Each surety shall be liable to contribution to his co-sureties, in proportion to the amount for which he is liable.

On whom bond obligatory. SEC. 9. Every official bond, executed by any officer pursuant to law, shall be deemed and taken to be in force and obligatory upon the principal and sureties therein, for any and all breaches of the condition or conditions thereof committed during the time such officer shall continue to discharge any of the duties, or hold such office.

Ibid. SEC. 10. Every such bond shall be deemed to be in force, and obligatory upon the principal and sureties therein for the faithful discharge of all duties which may be required of such officer by any law enacted subsequently to the execution of such bond and such condition shall be expressed therein.

Ibid. SEC. 11. Every official bond, executed by any officer pursuant to law, shall be in force and obligatory upon the principal and sureties therein, to and for the Territory of Idaho, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity, and any person so injured or aggrieved, may bring suit on such bond in his own name without an assignment thereof.

To become void; when. SEC. 12. Any such bond shall not be void on the first recovery of a judgment thereon, but suit or suits may be afterwards brought on said bonds, from time to time, and judgment recovered thereon by the Territory of Idaho, or by any person to whom a right of action may have accrued against such officer and his sureties on such bond, until the whole penalty of said bond shall be exhausted.

Ibid. SEC. 13. Whenever any such official bond shall not contain the substantial matter or condition or conditions required by law, or there shall be any defects in the approval or filing thereof, such bond shall not be void so as to discharge such officer and his sureties, but they shall be equitably bound to the Territory or party interested, and the Territory or such party may, by action instituted as other suits on official bonds, in any court of competent jurisdiction, suggest the defect of such bond or such approval or filing, and recover his proper and equitable demand or damages from such officer and the person or persons who intended to become and were included as sureties in such bond.

Copy of bond evidence.

SEC. 14. A copy of any official bond, certified to be correct by the officer having the custody thereof, shall be received as evidence in all courts in this Territory, in like manner as the original.

To whom act applies.

SEC. 15. All the provisions and requirements of this act shall apply to the official bond of any officer whose office shall be established hereafter, unless the contrary shall be expressly provided.

When sureties remove duty of county commissioners.

SEC. 16. Whenever the sureties, or any one of them, in the official bond of any county clerk, sheriff, coroner, assessor, justice of the peace, or other county officer, shall remove without the Territory, become insolvent, or insufficient, or the penalty of such bond become insufficient, on account of recoveries had thereon, or otherwise, it shall be the duty of the board of county commissioners of the proper county, on their own motion, or on the showing of any person supported by an affidavit, to summon any such officer to appear before them, at a time stated, not less than five days after the service of such summons, and show cause why he should not execute an additional official bond, with good and sufficient surety or sureties.

Ibid.

SEC. 17. Should such officer, after due notice, fail to appear at the time appointed, the matter may be heard and determined in his absence; if said board of county commissioners shall be of opinion, after examination, that the bond of said officer has become insufficient from any of the causes enumerated in the preceding section of this act, they shall require a further bond, with such security as may be deemed necessary to be executed and filed within twenty days.

When district attorneys' bond insufficient, proceedings.

SEC. 18. Whenever the official bond of any district attorney shall become insufficient from any of the causes enumerated in the sixteenth section of this act, the like proceedings may be had before the district court, in reference to the district attorney thereof; and whenever the official bond of the territorial treasurer, territorial controller, territorial superintendent of public instruction, and keeper of the territorial prison, shall become insufficient from any of the said causes, the like proceedings may be had before the district court of the county in which the seat of government is located; *provided*, that such proceedings shall be commenced by motion of any person made in open court, and supported by affidavit, or as to the official bond of district attorneys, territorial treasurer, controller, superintendent of public instruction, and keeper of territorial prison, upon the relation of the governor.

When office vacated. Sec. 19. If any officer, when required so to do, shall fail to file a new bond, his office shall be deemed vacant.

Sec. 20. Such additional bond shall be in such penalty as shall be directed by the board of county commissioners, and shall be in all other respects similar to the original bond, and shall be approved before and filed with the same officer as required in case of the approval and filing of such original bond. Every such additional bond, filed and approved as aforesaid shall be of like force and obligation upon the principal and sureties therein from the time of its execution, and shall subject the officer and his sureties to the same liabilities, suits and actions as are prescribed respecting the original bonds of officers.

Original bondsmen when not discharged. Sec. 21. In no case provided in the preceding sections of this act shall the original be discharged or affected when additional bond has been given, as herein required, but the same shall remain of like force and obligation as if such additional bond had not been given.

Officer and sureties to whom liable. Sec. 22. Such officer and his sureties shall be liable to any party injured or aggrieved by any breach or breaches of any condition or conditions of any such official bond, after the execution of such additional bond, upon either or both of said bonds respectively, and may assign the cause or causes of action and recover judgment therefor in each suit.

Separate judgments when execution may issue. Sec. 23. If separate judgments shall be recovered on said bonds by such parties for the same cause or causes of action, he shall be entitled to have execution issued on such judgments respectively, but he shall only collect by execution or otherwise, the amount actually adjudged to him on such like cause or causes of action, in one of said suits together with the costs of both suits.

Sureties paying, how may recover. Sec. 24. Whenever the sureties in either bond shall have been compelled to pay any sum of money on account of the principal obligor therein, they shall be entitled to recover in any court of competent jurisdiction, of the sureties in the remaining bond, a distributive part of the sum thus paid, in the proportion which the penalties of such bonds bear one to the other, and to the sums thus paid respectively.

Sureties, number of. Sec. 25. There shall be at least two sureties upon the official bond of every officer.

Appointment to fill vacancy duty of officer.

SEC. 26. Upon the appointment of any person to fill a vacancy in office, before entering upon the duties of the office, the person so appointed shall give a bond corresponding in substance and form with the bond required of the same officer when originally elected or appointed, to be approved by the board, court or officer making the appointment.

How sureties may be released.

SEC. 27. Any surety on the official bond of a city, county, or territorial or district officer, may be relieved from liabilities thereon afterwards accruing, by complying with the following provisions of this act.

Ibid.

SEC. 28. Such surety shall file with the court, judge, board, officer, person or persons authorized by law to approve such official bond, a statement in writing, setting forth the desire of said surety to be relieved from all liabilities thereon afterwards arising, and the reasons therefor, which statement shall be subscribed and verified by the affidavit of the party filing the same.

Copy of notice to be served on officer.

SEC. 29. A copy of the statement shall be served on the officer named in such official bond, and due return or affidavit of service made thereof as in other cases.

Notice, number of days required.

SEC. 30. In twenty days after the service of such notice, the court, judge, board, officer, person or persons with whom the same may be filed, shall make an order declaring such office vacant, and releasing such surety from all liability thereafter to arise on such official bond, and such office shall thereafter be held in law as vacant, and be immediately filled by election or appointment, as provided for by law, as in other cases of vacancy of such office, unless such officer shall have before that time good and ample surety for the discharge of all his official duties as required originally.

Sureties not to be released from damages.

SEC. 31. That act shall not be so construed as to release any surety from damages or liabilities for acts, omissions, or causes existing, or which arose before the making of such order as aforesaid, but such legal proceedings may be had therefor, in all respects as though no order had been made under the provisions of this act.

Executors, etc., when held.

SEC. 32. Executors, administrators and guardians shall be held as county officers within the provisions of this act.

Bonds given by trustees, etc.

SEC. 33. All bonds or undertakings given by trustees, receivers, assignees, or officers of a court, in an action or proceeding for the faithful discharge of their duties, when it is not otherwise provided by law, shall be in the name of and payable to the Territory of Idaho; and upon the order of the court where such action or proceeding is pending may be prosecuted for the benefit of any and all persons interested therein.

When action commenced for Territory, proceedings.

SEC. 34. When an action is commenced in any court in this Territory for the benefit of the same, to enforce the penalty of or to recover money upon an official bond or to recover money upon an afficiol bond or obligation executed in favor of the Territory of Idaho, or of the people of this Territory, the attorney or other person prosecuting the action may file with the court in which the action is commenced, an affidavit stating either positively or on information and belief, that such bond or obligation was executed by the defendant, or one or more of the defendants, (designated by whom), and made payable to the people of the Territory of Idaho, and that the defendant or defendants have real estate, or interest in lands, designating the county or counties in which the same is situated, and that the action is prosecuted for, the benefit of the Territory, and thereupon the clerk receiving such affidavit, shall certify to the recorder of the county or counties in which such real estate is situated the names of the parties to the action, the name of the court in which the action is pending, and the amount claimed in the complaint, with the date of commencement of the suit.

County recorder, duty of.

SEC. 35. Upon receiving such certificate, the county recorder shall endorse upon it the time of its reception, and such certificate shall be filed and recorded in the same manner as notices of the pendency of an action affecting real estate, and any judgment recovered in an action specified in section thirty-four of this act shall be a lien upon all real estate situated in any county in which such certificate is so filed, belonging to the defendant, or to one or more of such defendants, and shall bind such real estate, for the amount that the owner thereof is or may be liable, upon the judgment, from the filing of the certificate, and the fees due the clerk and recorder for the services required by this act shall be a charge against the county where the suit was brought, to be recovered like other costs.

Repealing clause.

SEC. 36. All laws and parts of laws, so far as the same conflict or are inconsistent with the provisions of this act, are hereby repealed; *provided*, that all official bonds heretofore given under the provisions of any act repealed by this act, shall remain and be in full force and effect, and shall not be affected by the provisions of this act.

All officers on file new bonds,

SEC. 37. All territorial, county and city officers shall, on or before the first day of March, A. D., 1867, file new bonds conforming to the provisions of this act, and in default thereof, their said offices shall be deemed to be vacant, and may be filled as required by law; *provided*, that all bonds given by any officer under the laws heretofore existing shall remain in full force and effect, and the principal and sureties thereon be responsible for any malfeasance in office, default or neglect in office, occurring up to the time of filing new bonds as required by the provisions of this act.

Bonds of justices, etc. by whom fixed.

SEC. 38. From and after the passage of this act, the amount of the official bonds of justices of the peace and constables shall be fixed by the board of county commissioners of the several counties of the Territory.

SEC. 39. This act to take effect and be in force from and after its passage.

APPROVED *January* 5, 1867.

AN ACT

SUPPLEMENTARY TO AN ACT ENTITLED "AN ACT CONCERNING THE OFFICIAL BONDS OF OFFICERS," APPROVED JANUARY 5TH, A. D., 1867.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Bonds of county treasurer how filed, etc.
2. Enacting clause

Bonds of county Treasurer how filed, etc.

SECTION 1. The official bonds of county treasurers shall be approved by the board of county commissioners filed and recorded in the office of the county recorder of their respective counties; and the same shall be subject to and governed in all respects, and all proceedings had thereon, in accordance with the provisions of "An act concerning the official bonds of officers," approved January 5, 1867.

SEC. 2. This act to take effect and be in force from and after its passage.

APPROVED *January* 9, 1867.

AN ACT

TO AMEND "AN ACT ENTITLED AN ACT TO PROVIDE FOR THE APPOINTMENT OF NOTARIES PUBLIC, AND DEFINING THEIR DUTIES.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. By whom appointed.
2. Oath of office and bond.
3. Oath and bond to be filed.
4. Authority and powers of.
5. Ibid.
6. Ibid.
7. Ibid,
8. To keep records.
9. Ibid.
10. To prove seal, etc.
11. To furnish certified copy of records.
12. Certificate to be evidence.
13. Penalty for neglect of duty,
14. Successor to receive records.
15. Ibid.
16. Successor may grant certificate.
17. Fees.
18. Qualification.
19. When approved.

Amendment 7th session.

SECTION 1. The governor shall have the power to appoint and commission in each county as many notaries public as he may deem necessary, who shall hold said office for the term of four years.

Amendment 5th session.

SEC. 2. Each notary public before entering upon the duties of his office shall take the usual oath of office, which shall be endorsed upon his bond, and shall enter in a bond to the people of the Territory of Idaho in the sum of one thousand dollars, with two or more sufficient sureties, to be approved by the probate judge of the county for which said notary may be appointed.

Sec. 3. The bond with the oath of office endorsed thereon and duly attested, together with a specimen of the signature and impress of the official seal of the appointee, shall be filed in the office of the territorial secretary. At the issuance of any commission hereafter, each appointee shall pay the sum of ten dollars to said secretary, who shall keep an account of the same and pay one-half thereof to the library fund for the use of the supreme court, and may apply the residue as his fees in that behalf. Each notary public now holding a commission shall within one hundred days after the passage of this act, make and file as in this act provided, a bond, together with a specimen of his signature and impress of his official seal; in default whereof his office shall be deemed vacant. Ibid.

Sec. 4. Notaries public shall have authority to demand acceptance and payment of foreign and domestic bills of exchange, and to protest the same for non-acceptance and non-payment, and to exercise such other powers and duties as by the laws of nations, and according to commercial usages or by the law of any other State government or country, may be performed by notaries public. 4th session

Sec. 5. They may also demand acceptance of inland bills of exchanee, and payment thereof, and of promissory notes, and may protest the same for non-payment or non-acceptance as the case may require. Ibid.

Sec. 6. Each notary public shall have power to take and to certify the acknowledgment or proof of powers of attorney, mortgages, deeds, and other instruments of writing, the acknowledgment of any conveyance or other instrument of writing by any married woman, and to give a certificate of such proof or acknowledgment, which certificate shall be endorsed on the said deed or other instrument, or attached thereto. Ibid.

Sec. 7. Each notary public shall also have power and authority to take depositions and to administer oaths and affirmations in all matters incident or belonging to the duties of his office, and to take affidavits to be used before any court, judge or officer in this Territory, except when acting as attorney for the party in a civil action. Ibid.

Sec. 8. Each notary public shall keep a correct record of all his official acts, done or performed by him, under and by virtue of the authority conferred by sections four and five of this act. Ibid.

Ibid. Sec. 9. Each notary public shall also keep a correct record, wherein he shall enter the name or character of any instrument acknowledged or proved before him, as provided in section six of this act, together with the date of the same, and the parties thereto, as the same appears therein.

Idid. Sec. 10. Each notary public shall provide a notarial seal, with which he shall authenticate all his official acts; on which seal shall be engraved such notary's name, and the name of the county for which he is commissioned; which seal, together with the registers and official documents, shall not be liable to be seized on any execution, and in the case of death or removal of said notary public, the aforesaid register and official documents shall be lodged in the office of the county recorder of his county, for the use of his successor in office.

Ibid. Sec. 11. Each notary public when required,shall give a certified copy of any record in his office, to any person, upon payment of the fees thereof, and any certificate or instrument, either printed or written, purporting to be the official act of a notary public, and purporting to be under the seal and signature of such notary public, shall be received as *prima facie* evidence of the official character of such instrument, and of the truth of the facts therein set forth,

Ibid. Sec, 12. The original protest of notary public, under his hand and official seal, of any bill of exchange or promissory note, for non-acceptance or non-payment, stating the presentment by him of such bill of exchange or note for acceptance or payment thereof, and the service of notice on any or all of the parties to such bill of exchange or promissory note, and specifying the mode of giving such notice, and the reputed place of residence of the party to whom the same was given, and the post-office nearest thereto, shall be *prima facie* evidence of the facts therein contained. The certificate of a notary public drawn from his record, stating the protest and the facts therein contained, shall be evidence of the facts in the like manner as the original protest.

Ibid. Sec. 13. For any misconduct or neglect of duty in any of the cases in which any notary public, appointed under the authority of this Territory, is authorized to act either by the laws of this Territory or of any State, government or country, or by the law of nations, or by commercial usage, he shall be liable on his official bond to the parties injured thereby, for all the damages sustained. For any willful violation or neglect of duty any notary public shall be subject to criminal prosecution, and may be punished by fine not exceeding one thousand dollars, or removal from office, or both.

Sec. 14. If any notary public die, resign, be disqualified, or remove from the county for which he is appointed, his records and all his public papers shall, within thirty days, be delivered to the recorder of the county, who shall deliver them to the successor of said notary public when qualified. Ibid.

Sec. 15. When the term of office of any notary expires, and his successor is appointed and qualified, he shall deliver his records and public papers to such successor on demand. Ibid.

Sec. 16. Any notary public having in his possession the records and papers of his predecessor in office, may grant certificates or give certified copies of such records and papers in like manner and with the same effect as such predecessor or predecessors could have done. Ibid.

Sec. 17. Each notary public shall receive the following fees for his services, namely: For drawing and copying every protest for the non-payment of a promissory note, or for the non-payment or non-acceptance of a bill of exchange, draft or check, three dollars; for drawing and serving every notice of non-payment of a promissory note, or of the non-acceptance of a bill of exchange, order, draft or check, two dollars; for recording every protest, two dollars; for drawing an affidavit, deposition or other paper, for which provision is not herein made, for each folio, fifty cents; for all other services, the same fees as are allowed by the laws of this Territory to other officers for like services. Ibid.

Sec. 18. No person shall be appointed a notary public under this act who is not at the time of his appointment an actual resident of and elector in the county for which he may be appointed. Ibid.

Sec. 19. This act shall take effect and be in force from and after its approval by the governor.

Approved *January* 10, 1867.

AN ACT

IN RELATION TO THE CLERK OF THE SUPREME COURT, AND PRESCRIBING HIS DUTIES.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. 2nd session.
2. Ibid.
3. Amendment 7th session.
4. 2nd session.
9, 6th session.

2nd session. SECTION 1. That the supreme court, or judges thereof, shall appoint a clerk, who shall hold his office during the pleasure of such court.

Ibid. SEC. 2. Before entering upon the duties of his office he shall take an oath of office and give bond in such sums, with surety and condition, as the said court or the judges thereof shall require, which bond shall be approved by one of the judges of the said court, and shall be deposited with the secretary of the territory; the bond shall be to the United States, and any party aggrieved by the official acts or omission of said clerk may have his action thereon.

Amendment 7th session. SEC. 3. The clerk shall keep his office at the seat of government; and shall keep it open at all reasonable hours; and shall keep such records and books as are prescribed by law and the supreme court. The rent for the office, fuel and lights, books and stationery, shall be paid for out of the territorial treasury, by drafts of the territorial controller, the bills being first approved by one of the judges of said court; *provided*, the sum allowed for rent of office, fuel, lights, office furniture, books, stationery and everything necessary for the carrying on and in the performance of the duties of said supreme court clerk, shall not exceed two hundred and fifty dollars annually.

Sec. 4. He shall file all papers that may be legally lodged with him for that purpose, noting the day, month and year when so filed. **2nd session.**

Sec. 5. He shall be responsible for the safe custody and delivery to his successors of all books and papers belonging to his office.

Sec. 6. He shall have power to administer oaths in every case where an oath is authorized by law.

Sec. 7. He shall not practice as an attorney or counselor, nor shall he be surety or bail in any case in the court of which he is clerk.

Sec. 8. He is authorized to take acknowledgments of his deeds and instruments of writing under the seal of his office.

Sec. 9. The clerk of the supreme court may lawfully charge, demand and receive the following fees for services rendered in discharging the duties imposed on him by law: For filing each transcript of record from an inferior court, one dollar; for entering any motion, rule, or order, one dollar; for entering judgment, for each folio, fifty cents; for each certificate given at request, and under seal, one dollar; for copy of record, or opinion of court, or other paper, for each folio, thirty cents; for entering each cause on calendar, and making copy for bar, fifty cents; for filing each paper, twenty-five cents; for every remittitur or mandate, for each folio, thirty cents; for certificate of admission, as attorney or counselor, including seal, two dollars; for administering oaths, or affirmation, including jurat, fifty cents; for taking and writing out acknowledgments of deeds, or other instruments, for each signature, including seal, fifty cents; for recording opinion of court, each folio, thirty cents; for issuing any process of court, including seal, one dollar. **6th session.**

Sec. 10. All acts and parts of acts in conflict with this act be and the same are hereby repealed.

AN ACT

TO REGULATE AND GOVERN THE APPOINTMENT OF DEPUTIES BY COUNTY OFFICERS DURING THEIR ABSENCE FROM THE COUNTIES WHEREIN THEY HOLD OFFICE.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That any county officer who has been, or may be granted leave of absence from the county wherein he resides and holds office, be, and hereby is required to appoint a good and sufficient deputy to act for him and in his place while absent.

SEC. 2. Should any county officer who has been granted leave of absence fail to appoint a deputy as required by this act, the act granting such leave of absence shall be considered null and void, and the office held by him shall declared vacant,and the vacancy shall be filled by the board of county commissioners of the county wherein he holds office.

SEC. 3. This act to take effect and be in force from and after its passage.

APPROVED *December* 31, 1870.

AN ACT

TO REPEAL "AN ACT TO REGULATE OFFICIAL OATHS," APPROVED DECEMBER 28, 1863, AND TO PRESCRIBE AN OATH TO BE ADMINISTERED TO PUBLIC OFFICERS IN THE TERRITORY OF IDAHO.

Preamble relating to official oaths.
SECTION 1. Oath of members of legislative assembly. Oath of officers, attorneys or counselors. Oath, form and substance of.
2. Oath, repeal of oath, approved December 28, 1863.

Preamble.

WHEREAS: At the third annual session of the Legislative Assembly of the Territory of Idaho, "an act to repeal an act to regulate official oaths, approved December 28, 1863, and to prescribe an oath to be administered to public officers, in the Territory of Idaho," was passed and transmitted to the governor of the Territory by the committee on "enrolled and engrossed bills," and became a law by reason of the governor failing to return the same within three days, (Sundays excepted) as provided by the organic act; and, WHEREAS, said bill was published in the *Idaho World*, a newspaper published in the county of Boise, and Territory of Idaho, by authority of the Legislative Assembly, but was not published and does not appear in the bound volume, among the session laws of the third session of the Legislative Assembly, therefore

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

Oath to be taken; by whom, etc.

SECTION 1. That the only oath which shall be required of any member of the legislative assembly, or of any officer who may have been elected, appointed or chosen, or who may hereafter be elected, appointed or chosen to any office within the Territory of Idaho, under the laws thereof, before entering upon his duties, or of any attorney or counselor at law or solicitor in chancery of any of the courts in this Territory shall be required to take upon admission to practice, shall be as follows:

"I, (here name the person and the office to which he has been elected, appointed or chosen) do solemnly swear, or affirm, that I will support the constitution of the United States and the organic act of this Territory; and that I will faithfully and truly perform all the duties which may be required of me by law, to the best of my ability, so help me God."

Oath, repeal of, etc. SEC. 2. That "an act to repeal an act to regulate official oaths," approved December 28, 1863, and to prescribe an oath to be administered to public officers in the Territory of Idaho, enacted at the third session of the Legislative Assembly, and all and any acts contravening this act, be and the same are hereby repealed.

SEC. 3. This act to take effect and be in force after ten days from the date of its becoming a law.

I hereby certify that the foregoing Council bill, No. 9, passed the Council December 27, 1866, the question being: Shall the bill pass, notwithstanding the objections of the governor?

AYES—Messrs. Carter, Fenn, Miller, Riggs, Scaniker, Stevenson, Street and Mr. President—8.

NAYS—Messrs. Brown and Hudson—2.

GEO. AINSLIE,
President of the Council.

Attest: CHAS. C. DUDLEY, Secretary.

I hereby certify that the within Council bill, No. 9, passed the House of Representatives, Idaho Legislature, December 28, 1866, the question being: Shall the bill pass, notwithstanding the veto of the governor?

AYES—Abbott, Bell, Cozad, Englis, Harris, Knight, Law, Monroe, Mitchell, Nordyke, Ohle, Paul, Parkinson, Stafford, Taylor, Thayer and Mr. Speaker—17.

NAYS—Davis, McMillan and McDonald—3.

A. W. FLOURNOY,
Speaker of the House of Representatives.

Attest: H. F. SAYRS, Chief Clerk H. R.

AN ACT

TO PROVIDE FOR THE PRINTING OF BLANKS FOR IDAHO TERRITORY.

Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:

SECTION 1. Amendment 7th session.
2. 6th session.
3. Ibid

SECTION 1. The territorial controller is hereby authorized and required on the first day of October in each year to advertise and give notice that he will receive sealed proposals for contracts, for the printing and delivery at the controller's office in Boise City, of all blanks required by said office during the year next ensuing, and such notice shall state the date for delivery of such blanks; a description and schedule of the same shall be made out and kept by the controller in his office for the inspection of any person desirous of making proposals for the printing of the same. Said notice shall be published in two newspapers, published in Idaho Territory, at least once a week, for at least four weeks, and shall state the time that all proposals will be opened, and the time such blanks shall be delivered, and at the time in said notice designated for the opening of such sealed proposals, the territorial treasurer shall meet at the said controller's office, and he and the said controller shall open said proposals, and they shall award the contract to the lowest bidder, and, *provided*, further, that the cost of said printing shall not exceed one thousand dollars in territorial warrants. **Amendment 7th session.**

6th session. SEC. 2. That the person or persons to whom the said contract is or shall be awarded shall, within ten days thereafter, file with the said controller a bond in the sum of two thousand dollars, with at least two good and sufficient sureties to be approved of by the said controller, conditioned for the faithful performance of his or their contract in accordance with the terms thereof. And if the said person shall fail or refuse to give such bond, the said contract shall be awarded to the next lowest bidder, or the said controller may advertise for other proposals under the provisions of this act, as he may think best.

Ibid. SEC. 3. All blanks of every description, required to be furnished by said controller by virtue of any of the laws of said Territory, shall be printed by and under a contract in accordance with the provisions of this act, and not otherwise; and no warrant shall be drawn by said controller upon the territorial treasurer for any sum for printing unless for and in accordance with a contract performed under this act.

SEC. 4. This act shall take effect and be in force from and after its passage.

AN ACT

TO PROVIDE FOR THE SUMMARY SALE OF MINES, OR MINING INTERESTS, BELONGING TO THE ESTATES OF DECEASED PERSONS.

Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:

SECTION 1. Mines, etc., of deceased persons may be sold.
2. Sales of mines, etc., by whom made.
3. Order for persons interested to appear.
4. Order of sale, etc.
5. Ibid.

Mines, etc., of deceased persons may be sold.

SECTION 1. Whenever it shall appear from the inventory of an estate of any deceased person that said estate consists in whole or in part of any mines or interests in mines, or of shares, interests or stocks in any mining corporation, such mines, interests, stocks or shares, may be sold under the order of the probate court having jurisdiction of said estate, and as herein after provided.

Sales of mines, etc., by whom made.

SEC. 2. The executor, administrator, or any heir at law of such estate, any creditor having a claim against the estate, any partner or member of any mining company in which such interests or shares are held, the president of any mining corporation in which stocks or shares are held or owned by such estate, may file in the probate court a petition in writing setting forth therein the general facts of such estate being then in due course of administration, and particularly describing the mine, interest, stock or shares owned by such estate, and which it is desired to sell; such petition shall further set forth particularly the condition and situation of the mines, mining interest, or of the mining company or corporation in which such interests or shares are held, and especially the reasons for such sale.

Order for persons interested to appear.

SEC. 3. Upon the presentation of such petition, the probate judge shall make an order, directing all persons interested to appear before him at a time and place specified, not less than four nor more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell such mines, mining interests, shares or stocks as are set forth in such petition, and as belong to such estate. A copy of such order to show cause shall be personally served on all persons interested in the estate at least ten days before the time appointed for hearing the petition, or shall be published at least four successive weeks in such newspaper as the court shall order; *provided*, however, if all persons interested in the estate shall signify in writing their assent to such sale the notice may be dispensed with.

Order of sale, etc.

SEC. 4. If, upon the hearing of such petition, it shall appear to the satisfaction of the probate judge that it is to the interest of the estate that such mining property or interests of the estate should be sold, or if it be made to appear to his satisfaction that an immediate sale is necessary in order to secure the just rights or interests of the mining partners, tenants in common or mining corporations in which such mining shares, stocks or property are held, such probate judge shall thereupon make an order of sale authorizing the executor or administrator to sell such mining interests, mines, stocks or shares, as hereinafter provided.

Ibid.

SEC. 5. After such order of sale shall be made by the probate judge, all further proceedings for the sale of such mining property shall be in conformity with the laws providing for the sale of other real property under the orders of the probate court, and whenever such mining interest shall consist of stocks or shares held and owned as personalty, such further proceedings for the sale thereof, after the order of the sale, shall be in conformity with the law providing for the sale of the other personal property of an estate.

SEC. 6. This act shall be in force and take effect from and after its approval.

APPROVED *January* 5, 1867.

AN ACT

TO ENCOURAGE AGRICULTURE AND MANUFACTURES.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1 Owners or occupants or land shall have right of way across others land.
2. Right of way how procured, how appointed.
3. Applicant to comply with stipulations of report.
4. Occupants to keep in repair, penalty for failure thereof.
5. Persons availing themselves of this act to file copy of report.
6, Assessors of damages to be sworn for faithful performance of duty.
7. Compensation of assessors of damages.

Owners or occupants of land shall have right of way across others land.

SECTION 1. Any person or persons who shall own or occupy land in this Territory, shall have the right of way across the lands of any other person or persons, for the purpose of conveying water by ditches or flumes, on his or their lands for agricultural, mining or manufacturing purposes, upon the following conditions:

Right of way how procured, how appointed.

SEC. 2. The person or persons desiring the right of way across the land of another, may make application to any justice of the peace of the precinct in which such water ditch is proposed, for the appointment of three disinterested persons, householders and residents, and in no way related to either party. to view the ground over which he or they may wish to construct a ditch or flume, for any of the purposes mentioned in section one of this act. Either party shall have the right to nominate one of such persons, to assess said damages, unless he waive such right by refusing so to do, and the persons so appointed shall within ten days view the ground over which such ditch or flume is proposed to run, and shall assess the amount of damages which will be sustained on account of the constructing such ditch or flume to all persons across whose lands the same may run, and shall immediately report the location and size of the ditch or flume to the justice of the peace who made the appointment or to his successor in office.

Applicant to comply with stipulation of report.

SEC. 3. Upon payment of the damages so assessed to all persons to whom they may have been assessed, it shall be lawful for the applicant to make such ditch or flume, which shall be in conformity to the report of the persons appointed to make the assessment.

Occupants to keep in repair, penalty for failure thereof.

SEC. 4. All persons who shall avail themselves of the benefit of this act shall be and are hereby required to construct and keep in good repair a sufficient number of good and substantial bridges and causeways wherever any road or public highway may cross the same, and any person failing to do so shall be considered guilty of a misdemeanor, and shall be liable for all damages that may accrue to any person on account of the same.

Persons availing themselves of this act to file copy of report.

SEC. 5. All persons who shall obtain the right of way under the provisions of this act, shall within the thirty days after the report of the persons appointed to assess damages, file with the recorder of the county a copy of such report, certified by the justice before whom the proceedings were had, or his successor in office.

Assessors of damages to be sworn for faithful performance of duty.

SEC. 6. The persons appointed to assess damages shall, before they enter upon the discharge of said duties, take and subscribe an oath for the faithful performance of their duties.

Compensation of assessors of damages.

SEC 7. The persons appointed to assess damages under this act, shall each receive the sum of five dollars for each day they may be engaged therein, and the justice of the peace shall be allowed the same fees as are allowed justices of the peace for like services in other civil cases; and all costs which may accrue in such proceedings shall be paid by the persons making the application; *provided*, that nothing in this act shall apply to any mining locality.

SEC. 8. This act to be in force from and after its passage.

APPROVED *January* 11, 1867.

AN ACT

REGULATING ENCLOSURES AND TO PREVENT THE TRESPASSING OF ANIMALS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Lots to be enclosed,
2. Enclosure, construction of, etc.
3 Ibid,
4. Ibid.
5. Ibid
6. Ibid.
7. Ibid.
8. Ibid.
9. Tresspassing, penalty for, etc., manner of proceeding.
10. Ibid.
11. Ibid.
12. Parties injured, proceedings.
13 Appraisers, duties of.
14. Damages. judgment for, etc.
15. Fees of justice.
16. Surplus sales, disposition of.
17. Appeals may be taken.

SECTION 1. All lots, fields and enclosures shall be enclosed in order to become a lawful fence or enclosure, as hereinafter prescribed.

Lots to be enclosed.

SEC. 2. A fence, or enclosure, constructed of posts and rails, shall be as follows: The posts to be not more than twelve feet apart, with substantial rails morticed in or firmly pinned on to the posts, not less than three rails or poles; the bottom rail or pole shall not be more than two feet above the surface of the ground, and such fence from the ground to the top rail shall not be less than four feet high.

Enclosure construc- of, etc.

SEC. 3. Where "crotches" are used in the construction of an enclosure, the poles, rails or timber placed

Ibid.

upon the same shall not be more than two feet above the surface of the ground, and staked and ridered with two additional poles, rails or timber on the top of the crotchets, and shall not be more than twelve feet apart, and said fence shall not be less than four feet high.

Ibid. Sec. 4. A board fence shall be constructed as follows: The posts shall not be more than eight feet apart, the boards not more than two feet from the ground, and not more than eight inches space between the boards, each, from the bottom to the top board, and such fence to be not less than four feet high.

Ibid. Sec. 5. For a picket or paling fence, the pickets or palings shall not be more than six inches apart, nor more than two feet from the ground, nor less than four feet high.

Ibid. Sec 6. A worm rail fence shall be at least four feet high, and the corners locked with rails, poles or stakes.

Ibid. Sec. 7. A turf fence, or embankment, shall be at least three feet high, and a ditch on either side, not less than three feet wide at the top, and not less than three feet deep.

Ibid. Sec. 8. A fence built of rock shall be four feet high, and the rock placed in a substantial manner.

Trespassing, penalty for, etc., manner of proceeding. Sec. 9. Any person or persons having any enclosures in conformity with the foregoing provisions of this act, shall be deemed to possess a lawful enclosure, and any animal, or animals, horses, mules, jacks, jennies, cattle, hogs or sheep, breaking into such enclosure, shall entitle the owner, his agent, attorney or lessee, or other party injured, to a lien upon said animal or animals until he or they are fully recompensed for all damages committed by said animal or animals; *provided*, that persons owning or occupying any lands in this Territory which are enclosed by any water course or natural embankment, or hill, or any cliff of rocks, may have the same examined by appraisers as is provided in section twelve of this act, and if such appraisers shall report the same as a sufficient enclosure it shall be deemed a lawful enclosure.

Ibid. Sec. 10. If any animal or animals before-mentioned shall break into any enclosure or through any fence conforming to the requirements of this act, the owner of such animal or animals shall for such trespass pay to the party injured the full amount of damages he shall have sustained by reason of such trespass, to be recovered with costs before any justice of the peace in the county, or in any court of record having jurisdiction in civil cases.

Ibid.

SEC. 11. The party injured may take up any animal or animals breaking into such enclosures and keep the same at the expense of the owner, and the said taker-up shall have a lien upon such animals for damages, costs and expenses; *provided*, that the owner may at any time pay charges, costs and expenses and take such animal or animals away.

Parties injured, proceedings.

SEC. 12. Upon complaint of the party injured, to any justice of the peace in the county in which such trespass is alleged to have been committed, said justice shall, upon a summons, as in civil actions against the owner or owners of said property as defendants; if their names be not known they may be designated in said summons by a fictitious name upon the return of said summons, if the same shall have been personally served, proceedings shall be had as in civil actions, if the summons be not personally served in consequence of such defendant not being found in the county, then the said justice shall forthwith issue an order requiring three disinterested freeholders of the precinct named therein, not related to the parties, to forthwith view the fence where the trespass is alleged to have been committed, and to appear at such time as shall be mentioned in said order, before said justice and give evidence thereof, and that upon such hearing, if said justice finds that said fence was lawful and sufficient, he shall proceed to assess the damages accruing in consequence of said trespass, and shall render judgment therefor, together with costs, as in other actions; *provided*, that said judgment shall only bind said property.

Appraisers, duties of.

SEC. 13. The appraisers appointed shall be entitled each to the sum of three dollars for their services and fifty cents each for every mile necessarily traveled by them, which shall be taxed as costs in said proceedings.

Damages, judgment, for, etc,

SEC. 14. Upon rendering judgment as herein provided, the justice shall issue execution thereon, particularly describing said property, and directing a sale thereof for the satisfaction of said judgment and costs; and the officer to whom the same shall be delivered for services, shall thereupon post notices in three conspicuous and public places in said precinct, which notice shall contain a particular description of said property, and specify a time and place of sale thereof, as in notice of sale on execution, which time shall not be less than ten nor more than fifteen days from the posting thereof. The constable or sheriff serving said papers shall receive the same fees as for like services in civil actions; *provided*, that any time before said sale, said owner or owners may redeem said property from said lien, upon paying the costs and judgment, whenever the same shall have been rendered or amount of said claim and costs.

Fees of justice.

SEC. 15. The justice of the peace shall be entitled to receive the same fees as for similar business in other civil cases.

Surplus sales, disposition of.

SEC. 16. After the sale of any property described in this act, and after the payment of all damages, expenses and costs, the overplus, if any there be, shall be paid over to the justice of the peace, and if not demanded by the owner of said property within ninety days from the date of said sale, seventy-five per cent. thereof shall be paid by said justice of the peace into the county treasury for the benefit of the common school fund, and twenty-five per cent., the balance thereof, shall be paid to the person taking and impounding said animal or animals, as compensation for his services.

Appeal may be taken.

SEC. 17. Nothing in this act contained shall prevent the owner of said property to the same rights of appeal as provided in civil cases. If in any case the amount of such damages shall equal or exceed one hundred dollars, then proceedings to foreclose said lien and sell said property may be had in the district courts of this Territory in the same manner as herein provided, as far as consistent with the practice of said courts.

SEC. 18. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 19. This act to take effect and be in force from and after the first day of May, A. D., 1867.

APPROVED *January* 10, 1867.

AN ACT

ENTITLED AN ACT CONCERNING FRANCHISES.

Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:

SECTION 1. Franchises deemed real estate
2. Liable for debts.
3. Interest may be attached.
4. Purchaser when to give bond.
5. Franchises, what included.

Franchises deemed real estate.

SECTION 1. That for all purposes connected with the collection of debts, dues or demands, or the enforcement of obligations, a franchise for the building of bridges, the construction of roads or the maintenance of ferries shall be deemed real property, and be controlled by the rules governing the same.

Liable for debts.

SEC. 2. That all rights or franchises heretofore granted, or which may be hereafter granted by the Territory of Idaho, through its Legislative Assembly, to any individual or individuals, corporation or corporations; to build, construct or maintain roads, ferries or bridges, or any or all of said things, and charge toll thereon, or receive any compensation from the public for the use of the same, shall be subject in like manner as real property, to the payment or satisfaction of any judgment or decree duly obtained in any court of said Territory competent to render such judgment or decree, whether the same be rendered in a suit to enforce the collection or satisfaction of any debt, due, demand or obligation heretofore contracted, or which may hereafter be contracted.

Interest in may be attached, etc.

SEC. 3. That all right, title or interest, claim property or demand, in and to such franchise, road, bridge or ferry, of all or any of such individuals, may be attached in the same manner in which real property may be attached to secure any judgment which may be rendered in any suit instituted against any or all of such persons to whom said described franchises have been granted, and the right, title and interest, property, claim and demand of said person or persons may be levied upon and sold under execution, to satisfy any such judgment or decree, in the manner in which real property is levied upon and sold under execution, and subject to the same rules of redemption.

Purchaser when to give bond.

SEC. 4. In all cases where the person or persons to whom any such right or franchise was originally granted, were required to execute any bond or undertaking as surety for the performance of any act or acts connected with said franchise, the party or parties purchasing at sheriff's sale shall, before the confirmation of said sale by the proper court, execute a similar bond or undertaking, to be approved and filed in like manner as the original.

Franchises what included.

SEC. 5. That all franchises which have heretofore been granted by any board of county commissioners of any county in this Territory be, and the same are hereby included in, and made subject to the provisions of this act.

SEC. 6. This act to take effect and be in force from and after its approval by the governor.

APPROVED *January* 9, 1867.

AN ACT

TO PREVENT STALLIONS FROM RUNNING AT LARGE IN IDAHO TERRITORY.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

Section 1. Stallions prohibited from running at large.
2. Penalty for owners letting run at large.
3. When taken up notice to be given owners, etc,
4. Owners of, when unknown, etc,
4. Owners making claim to property, result of.

Stallions prohibited from running at large,

Section 1. From and after the passage of this act it shall not be lawful for the owner or owners of stallions, over the age of two years, to allow the same to run at large in the Territory of Idaho.

Penalty for owners letting run at large,

Sec. 2. If any owner or owners or the agent of such owner or owners shall permit any animal as aforesaid, contrary to the first section of this act, to run at large, it shall be lawful for the person injured thereby to bring suit before any justice of the peace in the proper township against the person or persons so offending, who, upon conviction shall be fined in any sum not less than twenty dollars nor more than one hundred dollars, to be collected as fines are now collected by law.

When taken up, notice to be given owners,etc.

Sec. 3. Should any such animal as aforesaid be found trespassing upon lands or possessory claims of another, the person owning the land or possessory claim may take up and safely keep such animal, and when so doing shall give the owner or owners thereof five days notice that such an animal is in his or their possession; and if, at the expiration of the aforesaid time, the owner or owners shall neglect or refuse to remove such an mal and pay for all reasonable costs of keeping the same then the owner or owners of the land or possessory claim may cause such animal to be emasculated; *provided*, however, that the emasculation of such animal shall not release the owner or owners thereof from the penalty imposed by section two of this act.

Owners of, when unknown, etc. SEC. 4. Should the owner or owners of such animal be unknown, then it that case it shall be the duty of the person in whose possession the animal may be, to forthwith give notice, with the description of the animal, its marks or brands, in some newspaper, if one be published in the county, and if no newspaper be published in said county, then by three written or printed notices put up in the most public places in the county for at least three weeks, calling upon the owner to come forward and claim the property; and if, at the expiration of one month thereafter, no such owner or owners shall appear, then it shall be the duty of such person having possession of such animal to deliver the same to the constable of the township, whose duty it shall be to publicly dispose of the same to the highest bidder for cash in hand, and after paying all expenses necessarily connected with such animal, to pay the remainder into the county treasury, to be applied to the common school fund of said county; *provided*, however, that should the owner make claim to such property previous to sale being made, nothing in this act shall be so construed as to exempt him from all expenses incurred, or from penalties imposed therein.

SEC. 5. This act to take effect and be in force from and after its passage.

APPROVED *January* 13, 1869.

AN ACT

RELATING TO MARKS AND BRANDS.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Marks and brands to be recorded.
2. No two persons to use same mark or brand.
3. Counterfeit brand, penalty for using.
4. Fines, disposition of.

SECTION 1. That it shall be the duty of the recorder of deeds of each county, on the application of any person residing in such county, to record a description of the marks and brands with which such person may be desirous of marking his horses, mules, cattle, sheep or hogs, but the same description shall not be recorded for more than one resident of the same county. **Marks and brands to be recorded.**

SEC. 2. No two persons residing within fifteen miles of each other shall use the same mark or brand in this Territory; but in such cases the person having the oldest recorded mark shall have the preference, but nothing contained herein shall prevent the parties from agreeing which of them shall change his mark or brand. **No two persons to use same mark or brand.**

SEC. 3. Every person who shall make or use a counterfeit of any mark or brand as provided for in this act, for each time they shall use the same in marking or branding any animal, horses, mules, cattle hogs, or sheep, upon conviction thereof, shall be liable to the county in a sum of treble the amount of the value of the property so marked and branded, to be recovered before any court of competent jurisdiction in the Territory, one-half of which shall be paid into the county school fund, and the remainder into the county treasury, to be applied on the **Counterfeit brand, penalty for using.**

fifty five per cent. fund, and shall also, on conviction thereof, be imprisoned in the penitentiaty for a term not exceeding one year for each offence.

Sec. 4. This act to take effect and be in force from and after the first day of May, 1867.

Approved *January* 10, 1867.

AN ACT

TO PRESERVE MONUMENTS ERECTED OR MARKED FOR THE GUIDANCE OF THE TRAVELING PUBLIC.

Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:

Section 1. Defacing or destroying monuments, penalty for.
2. Repealing clause.

Defacing or destroying monuments penalty for.

Section 1. If any person shall remove, efface, cut down or destroy, in any manner, any landmark, guide-board, blazed tree or stake, placed, erected, or being upon the unappropriated public lands in this Territory, erected or blazed for the purpose of directing or guiding travel upon any road, highway, trail, or route in said Territory, whether erected or blazed by private persons, bodies corporate or politic, to direct or guide travel at any season of the year, such person shall be guilty of a misdemeanor, and every person so offending, shall, upon conviction before any court of competent jurisdiction, be fined in any sum not less than fifty dollars, nor more than one hundred dollars.

Sec. 2. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Sec. 3. This act to take effect and be in force from and after its approval by the governor.

Approved *January* 11, 1871.

AN ACT

RELATING TO WILD GAME.

Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:

Section 1. Persons prohibited from killing, when.
2. Persons offending, penalty for.

Persons prohibited from killing when.

Section 1. That it shall be unlawful for any person or persons in the Territory of Idaho, at any time after the first day of February, and before the first day of July in each year, to catch, kill, or destroy, or to pursue with such intention, any buffalo, deer, antelope, elk, mountain sheep, or goat, or to have in his possession or to expose for sale any of the wild game, or animals mentioned in this section, during the season when the killing, injuring, or pursuing is herein prohibited; *provided*, that nothing in this act shall be so construed as to prohibit any person or persons from taking any animals at any time for the purpose of taming the same, or for scientific purposes.

Persons offending, penalty for. Sec. 2. Any person or persons offending against this act, on conviction thereof, shall forfeit and pay for every such offence, a penalty of not less than five dollars, nor more than two hundred dollars, to be recovered with costs of suit in a civil action in the name of the people of the United States of the Territory of Idaho, before any justice of the peace; the fine so collected shall be paid into the county treasury for the benefit of said county where such action shall be brought; all such fines and costs shall be collected without stay of execution, and such defendant may, by order of the court, be confined within the county jail until such fines and costs shall have been paid.

Sec. 3. This act to take effect and be in force from and after its approval by the governor.

Approved *January* 16, 1864.

AN ACT

TO PROTECT SHEEP AND CASHMERE GOATS, AGAINST THE RAVAGES OF DOGS.

Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:

Section 1. Any person finding any dog or dogs, not on the premises of its owner worrying, wounding or killing any sheep, or Angora or Cashmere goats, may kill the same, and the owner thereof shall sustain no action for damages against any person so killing any dog or dogs, under such circumstances.

Sec. 2. This act to take effect and be in force from and after its approval by the governor.

Approved *January* 11, 1867.

AN ACT

FOR THE BETTER OBSERVANCE OF THE SABBATH DAY.

Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:

SECTION 1. 8th session.
2. 4th session.
3. Repealing clause.

8th session. SECTION 1. No shop keeper, merchant, saloon keeper or other person, except apothecaries and druggists, shall keep open the front door of any shop, store, saloon, or other place of business, between the hours of 10 o'clock in the forenoon and 3 o'clock in the afternoon on the first day of the week, commonly called Sunday; and every person so offending shall, on conviction, be fined in any sum not more than fifty dollars nor less than twenty dollars.

4th session. SEC. 2. No judicial business shall be transacted by any court except deliberations of a jury, who have received a case on a week day, so called, and who may receive further instruction from the court at their request, or deliver their verdict; nor any civil process be served by any certifying or attesting officer; nor any record made by any legally appointed or elected officer upon the first day of the week, commonly called Sunday, except as hereinafter provided; *provided*, that criminal process may issue for the apprehension of any person charged with crime, and criminal execution to be proceeded with; and, *provided*, further, that in civil causes orders of arrest may be made and executed; writs of attachment and execution may be issued and served;

proceedings to recover possession of personal property may be had, and suits for the purpose of obtaining such writs and proceedings may be instituted in the proper courts of justice in this Territory as provided by the laws thereof on any day of the week, Sunday not excepted; *provided*, that before an execution shall issue or be served on the first day of the week, the person applying for such process or service shall make an affidavit that the defendant in execution has removed or disposed of his property, or is about to remove or dispose of his property with intent to defraud his creditors.

SEC. 3. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 4. This act to take effect and be in force from and after its passage.

APPROVED *January* 14, 1875.

AN ACT

RELATING TO INSURANCE COMPANIES.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Tax, amount of.
2. Agent to procure license; penalty for failure.

Tax, amt. of.

SECTION 1. There shall be levied and collected a quarter yearly license tax as follows:

First—From each and every insurance company incorporated by laws of this Territory, and transacting an insurance business therein, twenty-five dollars per quarter, yearly, payable to the county treasurer, for territorial purposes;

Second—From each and every insurer or insurance company, foreign or otherwise, not incorporated by laws of this Territory, and transacting an insurance business therein, or agent or agents thereof, fifty dollars per quarter year, payable to the county treasurer, for territorial purposes.

Agent to procure license, penalty for failure.

SEC. 2. Any person or person, or agent or agents of any company or corporation, who shall transact an insurance business without having first procured a license, as provided in this act, shall be deemed guilty of a misdemeanor, and on conviction thereof, before any justice of the peace or court having jurisdiction thereof, shall be fined for each and every offence the sum of one hundred dollars, or be imprisoned in the county jail of the county where such offence is committed, for a term not exceeding six months, or by both such fine and imprisonment.

SEC. 3. This act to take effect and be in force from and after its passage.

APPROVED *January* 10, 1871.

AN ACT

TO EXEMPT FIRE INSURANCE COMPANIES

THEIR AGENT OR AGENTS FROM THE PROVISIONS OF "AN ACT RELATING TO INSURANCE COMPANIES.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That an act entitled "An Act, Relating to Insurance Companies," approved January 10, 1871, so far as it applies to fire insurance companies, their agent or agents, be and is hereby repealed.

SEC. 2. This act shall take effect and be in force from and after its passage.

APPROVED *January* 8, 1875.

AN ACT

DEFINING DUTIES AND COMPENSATION OF THE TERRITORIAL TREASURER.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1.	3rd session.
2.	6th session.
3.	Ibid.
4.	Ibid.
5.	Ibid.
6.	2nd session.
7.	Ibid.
8.	Ibid.
9.	2nd session.
10.	Ibid.
11.	Ibid.
12.	Ibid,
13.	6th session.
14.	3rd session.

3rd session, SECTION 1. The territorial treasurer shall reside and keep his office at the seat of government, and before entering upon the duties of his office shall execute and deliver to the governor a bond to the Territory in the sum of twenty-five thousand dollars, to be approved by him, conditioned to pay over all moneys at such time as required of him by law, and for the faithful performance of all duties required by law, and take an oath of office before some judge or justice of the peace within the Territory, to be endorsed on his commission, and file a copy thereof, together with his bond, in the office of the secretary of the Territory.

6th session. SEC. 2 That the territorial treasurer shall pay warrants on any of the several funds in his office in their regular order, as prescribed by law.

Sec. 3. That when any warrant is presented for payment, as prescribed in section one (1) of this act, and there is not money on hand to pay the warrants in full, he shall pay to the holder thereof such sums only as may be in said treasury. He shall divide the warrant, retaining that portion on which the number of the warrant is, and require the owner of said warrants to receipt for the amount received, on the back of said portion; the other part of the warrant shall be returned to the owner thereof, with the following endorsement on the back: (No., in figures,) number of warrant written, total amount of warrant to date, amount paid on warrant, balance due on warrant on date of partial payment, date of partial payment, name of treasurer. And said portion of warrant, so endorsed, shall constitue a charge against the fund on which it was originally drawn, for the amount of the balance as shown by the endorsement, and be payable out of the first money in said fund; and the above provided division of any warrant shall in no way destroy its validity; and nothing in this act shall be construed as allowing the payment of interest on interest. Ibid.

Sec. 4. All the provisions of this act, providing for the partial payment of warrants, shall apply to the redemption fund of the several counties in this Territory. Ibid.

Sec. 5. The territorial treasurer failing or refusing to comply with the provisions of this act, shall be liable, on complaint and conviction, to the party complaining, in a sum double the amount so complained of. Ibid.

Sec. 6. If the territorial treasurer shall, either directly or indirectly, use, loan, or, in any manner, place out of his possession, otherwise than on special deposits, or to pay the same out on warrants drawn on him, as provided by statute, any funds belonging to, or collected by, or paid to him for the use and benefit of the Territory or any county, or the common school fund, or if such territorial treasurer shall exchange one kind of money, received by him in his official capacity, for any other kind or species of money, he shall be deemed guilty of felony, and, on conviction thereof, shall be forthwith removed from office, and shall also be punished by a fine in any sum not exceeding ten thousand dollars, or imprisoned in the territorial prison for any length of time not exceeding five years, or by both such fine and imprisonment. 2nd session,

Sec. 7. The books, papers, letters and transactions pertaining to the office of treasurer, shall, at all times during office hours, be open to the inspection of a com- Ibid.

mittee of the Legislative Assembly, or either branch thereof, to examine and settle all accounts, or to take copies of the same, to count all monies, and shall, at all times, when not necessarily in use by the officers, be open for the inspection of any person whomsoever, without any fee or charge; and when the successor of any such treasurer shall be elected or appointed and qualified, the territorial auditor shall examine and settle all the accounts of such treasurer, remaining unsettled, and give to him a certified statement, showing the balance of moneys, securities, and effects for which he is accountable, and which have been delivered to his successor, and report the same to the Legislative Assembly.

Ibid. SEC. 8. It shall be the duty of the territorial treasurer to keep a register of the territorial warrants presented to him and not paid for want of funds, in the order of their presentation, and shall write across the back of the same: "Presented and not paid for want of funds;" said indorsement to be dated and signed by the treasurer, and said warrant shall draw interest at the rate of ten per cent. per annum, from the date of presentation, until paid; *provided*, that warrants drawn prior to the approval of this act shall be paid in the order of their number.

2nd session. SEC. 9. The treasurer shall grant duplicate receipts under the seal of his office, for all sums of money that shall be paid into the treasury; and the person receiving the same shall deposit one of them with the territorial auditor, who shall credit such person accordingly and charge the treasurer with the amount.

Ibid, SEC. 10. The treasurer shall have power to administer all oaths required by law, in matters pertaining to the duties of his office.

Ibid. SEC. 11. The treasurer shall keep a seal of office for the authentication of all papers, writing and documents required by law to be certified by him; and copies, so authenticated and certified, of all papers and documents lawfully deposited in his office, shall be received in evidence as the original documents.

Ibid. SEC. 12. If the territorial treasurer shall willfully and unlawfully refuse to pay any warrant lawfully drawn upon the treasury, he shall forfeit and pay fourfold the amount, to be recovered by action against the treasurer and his sureties on his official bond, or otherwise; shall also suffer such other punishment as the law shall provide.

6th session. SEC. 13. The treasurer shall receive as a compensation for his services, the sum of one thousand dollars per annum to be audited by the territorial controller, and to be retained by said treasurer from any moneys in the treasury not otherwise appropriated out of the general fund, and said sum of one thousand dollars shall be audited quarterly by the territorial controller, and returned by said treasurer, and said sum shall be in full and only compensation for all services rendered by the territorial treasurer, under all laws now in force or which may be hereafter passed, imposing duties on said treasurer, including his duties as territorial prison commissioner, and his duties under an act "to provide for funding the indebtedness of the Territory of Idaho;" approved January 12, 1866, and said treasurer shall not be allowed any pay whatever for office rent, fuel, lights or stationery.

SEC. 14. The governor of the Territory is hereby authorized and directed, at any time whenever he shall consider it necessary for the safe keeping and disbursement of public moneys, to make an examination of she amount in the possession of the territorial treasurer, and for that purpose shall have access to the same. 3rd session.

SEC. 15. All laws and parts of laws in conflict with the provisions of this act are hereby repealed.

AN ACT

TO PROVIDE FOR THE BETTER MAINTENANCE OF THE INDIGENT SICK, IDIOTIC, AND INSANE PERSONS IN THE SEVERAL COUNTIES OF THIS TERRITORY.

Be it enabted by the Legislative Assembly of the Territory of Idaho, as follows:

SECTION 1. Empowered to levy *per capita* tax.
2. Not to exceed one-fourth of one per cent
3. May make contract to keep indigent sick,
4. Time and manner of collecting tax.

Empowered to levy per capita tax.

SECTION 1. The board of county commissioners in and for the several counties in this Territory, are hereby empowered to levy, annually, and cause to be collected in their respective counties, such special *per capita* tax, as they may deem necessary, not to exceed the sum of two dollars for each taxable inhabitant thereof, to be appropriated to the care and maintenance of the indigent sick, idiotic, and insane persons in such county.

Not to exceed one-fourth of one per cent.

SEC. 2. The board of county commissioners of each county are also empowered to levy, and cause to be collected annually, in addition to the amount authorized by the provisions of section one of this act, a sum not to exceed one-fourth of one per cent. on the value of all taxable property of such county as may by them be deemed necessary and sufficient for the support of the resident indigent sick, idiotic, and insane persons of their respective counties.

May make contract.

SEC. 3. It shall be lawful for the board of county commissioners of each county in this Territory, to contract with any responsible party or parties in the Territory, upon such terms as may be deemed just and equitable, for the care, protection and maintenance of the indigent sick, idiotic, and insane persons of their respective counties. All persons or parties with whom such contracts may be made by any board of county commissioners, shall enter into bonds, to the commissioners, with two or more approved sureties, in such sums as may seem just, conditioned for the faithful performance of their duties; *provided*, that all persons with whom such contracts may be made, shall render quarterly reports to the board of county commissioners of such indigent sick, idiotic, and insane persons committed to their charge, showing the causes and nature of their confinement, and the expenses attendant upon their care and maintenance.

Time and manner of collecting tax.

SEC. 4. The taxes specified in this act shall be collected in the same manner and at the same time as other taxes, and by the same officers who are now, by law, or may hereafter be elected or appointed to collect county revenue; and the said taxes, when collected, shall be paid into the county treasury, and the treasurer shall receipt therefor, and all the money thus collected shall constitute and be known as the special hospital fund of the county, and shall be used for the care, protection, and maintenance of the indigent sick, idiotic, and insane persons, and for no other purpose or object. The treasurer of each county shall cause to be provided, blank receipts for the special *per capita* tax herein provided, which receipt shall be signed by the treasurer, and countersigned by the county auditor, and by the treasurer delivered to the county assessor, taking his receipt therefor, and making a register of the same, with the number thereof, in a book to be kept by him for that purpose. No money set apart, under the provisions of this act, for the benefit of the indigent sick, idiotic, and insane persons, shall be drawn from the hands of the officer or officers having the charge of the same, according to law, except upon the presentation of the order of the board of commissioners, drawn on the hospital fund.

SEC. 5. This act to take effect and be in force from its approval by the governor.

APPROVED *December* 13, 1864.

AN ACT

SUPPLEMENTARY TO AN ACT ENTITLED "AN ACT TO PROVIDE FOR THE BETTER MAINTENANCE OF THE INDIGENT SICK, IDIOTIC AND INSANE PERSONS IN THE SEVERAL COUNTIES OF THIS TERRITORY," APPROVED DECEMBER 13, 1864.

Be it enacted by the Legislative Assembly of the Territory of Idaho.

SECTION 1. Application for aid how made.
2. Probate judge and clerk to investigate application.
3. County commissioners to act, when and how.
4. Claims and demands when allowed, by whom.
5. May administer oath, etc.
6. Application may be made for sick person, by whom, when.

Application for aid how made.

SECTION 1. That any sick persons desiring aid from any county of this Territory, shall, before such aid can be given, make a written application to the probate judge or clerk of the board of county commissioners in which such application is made, setting forth and describing all the property, real, personal and mixed, wherever it is situated, owned in whole or part, by such applicant, or in which he or she has any legal or equitable interest; if such applicant have no property real or personal, then he or she shall declare his or her indigency and destitution, which shall be signed by the party or parties making such application, and sworn to before some officer authorized by the laws of this Territory to administer oaths, which said oath shall be filed in the office of the clerk of the board of county commissioners.

Probate judge and clerk to investigate application.

SEC. 2. That it shall be the duty of the probate judge, or clerk of the board of county commissioners of such county to investigate the grounds of such application, and that for such purpose they may require the applicant and such other witnesses as they may deem necessary, to testify under oath, and if they are fully satisfied that the said applicant is really sick, indigent and in destitute circumstances, and would suffer unless aided by the county, they shall file a certificate to that effect with the clerk of the board of county commissioners of such county.

County commissioners to act, when and how.

SEC. 3. That the county commissioners of such county shall, after the filing of the certificate as aforesaid, if in their judgment, the applicant is sick and indigent, and would suffer if not aided by the county, make such provisions for his or her relief, as may be necessary under the circumstances.

Claims and demands when allowed, by whom.

SEC. 4. That the county commissioners of such county, shall not allow any claim or demand against the county, for service rendered to any sick person or persons, who have not previously obtained from the probate judge or clerk of the board of county commissioners the certificate heretofore mentioned in this act, and shall not allow any claims or demands, whatsoever, against such county, for any expense incurred by, or in behalf of any sick person before the date of filing the application and certificate aforesaid.

May administer oath, etc.

SEC. 5. That the said clerk or probate judge is authorized to administer any oath or affirmation required under the provisions of this act.

Application may be made for sick person by another, when.

SEC. 6. That if any sick and indigent person or persons, desiring assistance from any county in this Territory, is unable from illness to make the application in writing, required in section one of this act, such application may be made for him or her, or on his or her behalf by any other person under oath, and such application shall be valid under the provisions of this act.

SEC. 7. This act to take effect and be in force from and after its passage.

APPROVED *December* 22, 1870.

AN ACT

CONCERNING TOLL ROADS, BRIDGES AND FERRIES.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1, Commissioners may alter and regulate rates of toll.
2. Notice, may appear and show cause.
3. Commissioners shall, by order, specify rate of toll, etc.
4. Fines, disposal of.

Commissioners may alter and regulate rates of toll.

SECTION 1. That the board of county commissioners of each county of this Territory are hereby authorized and empowered to alter and regulate the rates of tolls,on toll roads, bridges and ferries, within their respective counties; *provided*, that notice of at least twenty days shall be given by the clerk of the board, to the owner or owners of any toll road, bridge or ferry, of the intention of the board of county commissioners to alter or regulate the toll on said toll road, bridge or ferry; *provided*, nothing in this act shall be so construed as authorizing or empowering the county commissioners to increase the present rates of toll on any toll road, bridge or ferry.

Notice, may appear and show cause.

SEC. 2. Upon receiving the notice as specified in section one of this act, the owner or owners of any toll road, bridge, or ferry, may appear before the board of county commissioners and show cause why their rates of toll shall not be allowed.

Commissioners shall by order specify rate of toll, etc.

SEC. 3. The board of county commissioners shall, by an order entered on their minutes, specify the rates of toll to be charged upon any such toll road, bridge, or ferry, from and after the date of the entry of such order, and if any person or persons shall thereafter charge or collect a greater rate of toll than that specified in such order, he or they shall be deemed guilty of a misdemeanor, and, upon conviction thereof, he or they shall be punished by a fine not exceeding one hundred dollars

SEC. 4. All fines collected under the provisions of this act shall be paid into the county treasury as a part of the school fund. Fines, disposal of.

SEC. 5. All laws and parts of laws in conflict with the provisions of this act are hereby repealed.

SEC. 6. This act to take effect from and after its passage.

APPROVED *December* 30, 1870.

AN ACT

TO PERMANENTLY LOCATE THE CAPITAL OF THE TERRITORY OF IDAHO.

Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:

SECTION 1. Boise City, the place of location.
2. Who to act as commissioners; purpose thereof.
3. Secretary to draw a warrant upon treasurer, etc.

SECTION 1. That the capital of the Territory of Idaho be, and the same is hereby permanently located at Boise City, in the county of Boise * and said Territory of Idaho. Boise City, the place of location.

SEC. 2. The capital buildings are hereby located on the grounds known in and described on the plat of said Boise City as the capital square. And the Honorables Caleb Lyon, C. B. Waite, and J. M. Cannady are hereby appointed as commissioners to receive a deed to said capitol square, and such other grounds as may be deem- Commissioners appointed.

ed necessary, to hold in trust for the Territory, for the purpose of erecting the capitol buildings aforesaid.

Secretary to draw warrant on treasurer, etc.

SEC. 3. The secretary of said Territory is hereby authorized to immediately draw a warrant upon the treasurer of the Territory for such sum, not exceeding the sum of two thousand dollars, as shall be necessary to remove the papers, books, documents, and other property belonging to his office, to said Boise City.

SEC. 4. This act to take effect from and after the twenty-fourth day of December, 1864.

APPROVED *December* 7, 1864.

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* Now Ada.

AN ACT

DEFINING THE MEANING AND INTENTION OF REPEALING SECTIONS OF LEGISLATIVE ENACTMENTS.

Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:

SECTION 1. Acts not revived unless by express words,
2. Repeal of act not to release or extinguish penalty, etc.

Acts not revived unless by express words.

SECTION 1. No act or part of an act repealed by another act of the Legislative Assembly is revived by the repeal of the repealing act, without express words reviving such repealing act or part of an act.

Repeal of act not to release or extinquish penalty, etc.

SEC. 2. That the repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture or liability incurred under such statute, unless the repeallng act shall so expressly provide, and such statute shall be treated as still remaining in force or the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture or liability.

SEC. 3. This act to take effect and be in force from and after its passage and approval.

his property, as herein provided, he or they shall forfeit and pay to the party aggrieved, for every such offence, a sum not less than twenty-five nor more than one hundred dollars, to be recovered before any justice of the peace having jurisdiction, and shall, moreover, be liable in an action at law for any special damages such person may have sustained by reason of such refusal or neglect; but no forfeiture or damages shall be recovered when it shall be manifestly unsafe or hazardous to convey such person over such stream, by reason of any storm, flood, or ice, nor shall any keeper of a ferry be compelled to give passage to any person or property until the fare or toll, chargeable by law, shall have been fully paid or tendered to such keeper.

Rates of toll must be posted

SEC. 8. All persons who shall have obtained a license to keep any toll road, trail, bridge, or ferry, under the provisions of this act, shall post up and keep in some conspicuous place at each end of said bridge, trail, or road, or near the landing of such ferry, a written or printed list of the rates of charges, in a plain and legible style, so that the same may be easily read; and if at any time such keeper shall neglect or refuse to post up and keep such list, it shall not be lawful to charge or take any toll at such road, trail, bridge, or ferry during the time of such delinquency.

Rights and privileges of owners.

SEC. 9. Any and all persons who shall have received a license to keep a bridge or ferry, by virtue of this act, shall have the exclusive privilege of transporting all persons and property over or across the place or stream where such bridge or ferry is located, and shall be entitled to the fare arising by law therefrom, and shall be protected in such privilege within well established bounds, not to exceed two miles above and two miles below the point of location of such ferry; *provided*, that nothing herein contained shall be so construed as to prevent any person from crossing or passing over any place or stream within such bounds, free of charge, at certain seasons of the year when it shall not be necessary to use such bridge or ferry.

Penalty for keeping without license.

SEC. 10. Any and all persons who shall keep or attempt to keep any toll road, trail, bridge, or ferry, and receive toll or pay, therefor, without first obtaining a license for the same, shall pay a fine of not less than fifty dollars for each offense, for the benefit of the common school fund, and for which suit may be instituted by any aggrieved party, before any justice of the peace having proper jurisdiction.

Application to whom.

SEC 11. Whenever any toll road or trail shall be constructed partly in one county and partly in another, and whenever any bridge or ferry shall be established over any stream or water course which divides one county from another, the party desiring a license to keep and maintain such toll road, trail, bridge, or ferry shall apply to the board of county commissioners of each county respectively interested therein, and shall pay a relative proportion of such license tax to the respective county treasurers, as in this act provided, and it shall be the duty of the board of commissioners sitting at the county seat nearest to the terminus of such road or trail, or location of such bridge or ferry, to determine the total amount of such license tax the person or parties making such application shall be required to pay.

Privileges, extent of,

SEC. 12. All grants of charters or franchises, by virtue of this act, to individuals or companies to construct roads or trails, shall include the right of way over the lands, water courses, or premises, so far as the same may be necessary to enable the party or parties receiving such charter, franchise. or grant to carry into effect the purposes and objects of such charter, franchise or grant; *provided*, the same shall, in no case, conflict with the vested rights of others.

Taxes, failure to pay, penalty for.

SEC. 13. If any person or party licensed to keep a toll road, trail, bridge or ferry, under the provisions of this act, shall fail to pay the tax or taxes assessed thereon when due, or shall not provide for and keep the same in good and complete repair,necessary for the safe travel and conveyance of persons and property, or shall abandon the same for the space of sixty days, it shall be lawful for the board of county commissioners of the proper county, on complaint being made in writing, to summon the person or party licensed to keep such road, trail, bridge, or ferry, to show cause why such license should not be revoked, and to decide thereon according to the testimony adduced, and the laws of this Territory; which decision, when made, shall be valid to all intents and purposes, but subject to appeal, as in other cases, to the district court.

SEC. 14. This act to take effect and be in force from and after its approval by the governor.

APPROVED *December* 20, 1864.

AN ACT

TO LEVY A TAX OF ONE PER CENT. OF THE GROSS PROCEEDS OF TOLL ROADS BRIDGES, AND FEBRIES, IN THIS TERRITORY, TO CONSTITUTE A GENERAL SCHOOL FUND.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Tax of one per cent.
2. Statement of receipts to be made annually.
3. Moneys received, disposition of. Failure to make return, penalty for.
4. Proceedings upon forfeiture of right.

Tax of one per cent.

SECTION 1. One per cent. of the gross proceeds of all toll roads, bridges, ferries, and all other franchises granted by Legislative enactment in the Territory of Idaho, or that may hereafter be established shall be paid into the treasury of the Territory, to be set apart and constitute a portion of the common school fund.

Statement of receipts to be made annually.

SEC. 2. The grantees and their assigns of all toll roads, ferries, bridges, and all other franchises granted as aforesaid, that now are or shall hereafter be established in this Territory, shall on oath, make semi-annual statements to the auditor of the Territory, accompanied by the receipt of the treasurer of the county, of the gross amount of receipts derived from toll received from any toll road, ferry, bridge, or other franchise in their possession or control.

Moneys received, disposition of, etc.

SEC. 3. All moneys received by the territorial treasurer by virtue of section two of this act, shall be set apart and made a territorial school fund, and shall be subject to the order of the superintendent of public instruction, and be apportioned among the respective counties of Idaho Territory as herein provided for ; *provided*, that the grantees or their assigns shall refuse or neglect to make such report, or pay over said money as provided by this act, or shall in any way make a false return or pay over a less amount than one per cent. of their gross receipts, such failure shall work a forfeiture of his or their franchise ; and it shall be the duty of the territorial auditor to make out a certificate of such forfeiture with his seal of office attached, directed to the sheriff of the county in which the holders of such franchise have their place of business, directing said sheriff to serve the same immediately upon him or them at their place of business.

Proceedings upon forfeiture of right.

SEC. 4. If any person shall undertake to exercise any of the rights of such franchise after receiving notice from the territorial auditor, as herein provided, of such forfeiture, he she or they shall be deemed guilty of a misdemeanor, and fined in any sum not exceeding one thousand dollars or be imprisoned in the county jail not exceeding six months, or both, at the discretion of the court, for every such offense.

SEC. 5. This act to take effect and be in force from and after the first day of April, A. D.., 1865.

APPROVED *December* 22, 1864.

AN ACT

CONCERNING FERRIES AND TOLL BRIDGES.

Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:

SECTION 1. Where to to take out ilcense-
2. When to take effect.

SECTION 1. Whenever a ferry or toll bridge crosses a stream or slough forming the boundary line between two counties, and not held by chartered rights, the owner or owners of the same shall take out a license in the county lying on the right bank descending such stream or slough; *provided*, that the amount paid for such license shall be equally divided between such two counties, and the county treasurer to whom said money may be paid, shall at all times pay one half thereof, whenever demanded, upon the order of the county treasurer in which said bridge or ferry terminates. Should the county treasurer to whom such license money may have been paid neglect or refuse to pay over to the county treasurer of the county entitled to the one half of said money, on demand, suit may be brought against such treasurer so neglecting or refusing, and the securities on his official bond, in the name of the county to which said money is due, in any court of competent jurisdiction, and judgment shall be recovered for double the amount so found to be due.

Where to take out license.

SEC. 2. This act to take effect from and after its passage.

When to take effect.

APPROVED *January* 2, 1866.

AN ACT

SUPPLEMENTARY TO AN ACT ENTITLED "AN ACT IN RELATION TO THE CONSTRUCTION OF BRIDGES, FERRIES, ROADS AND TRAILS," APPROVED DECEMBER 22, 1864.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Commissioners to grant right of way for toll road.
2. Commissioners to grant right of way to ferries.

Commissions to grant right of way for toll road, etc.

SECTION 1. The board of commissioners of the respective counties in this Territory are authorized and empowered by this act, upon application made to them in accordance with the provisions of the act to which this act is supplementary, to grant unto said applicants an exclusive right of way, over or across any part of their respective counties; *provided*, said right of way does not interfere with prior vested rights of others; and said exclusive right of way shall not exceed one mile on each side of the line of road or trail embraced in said right of way, and said right of way shall not be granted for a longer term than eight years.

Ibid.

SEC. 2. The said board of commissioners are further authorized and empowered to grant exclusive right of way across any river or stream within their respective counties, for any ferry or bridge, but said right of way shall not exceed one mile above and one mile below the point of landing of said bridge or ferry, and said right of way shall not exceed the term of eight years; *provided*, always, that the said county commissioners shall, and they are hereby required to reserve to themselves, and to their successors in office, the right to alter and change the rates of toll thereon, at any time or times they may deem proper.

SEC, 3. All acts or parts of acts contravening this act shall be and the same are hereby repealed.

SEC. 4. This act to take effect and be in force from and after its approval by the governor.

APPROVED *January* 11, 1866.

AN ACT

MAKING DAMAGES SUSTAINED BY THE TRAVELING PUBLIC A LIEN UPON THE PROPERTY OF ANY FERRY, BRIDGE. TOLL TRAIL OR TOLL ROAD, UPON WHICH TOLLS ARE COLLECTED.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Damages, remedy for.
2. Enacting clause.

Damages remedy for.

SECTION 1. Any damages sustained by any person or persons in crossing any toll bridge or ferry, or in traveling upon any toll trail or toll road, upon which toll gates are established or tolls collected, caused by the neglect of the owners thereof, either by unskillful management or failure to keep such bridge, ferry, toll road or toll trail in good repair for the accommodation of the traveling public shall be a lien upon said bridge, ferry, toll road or toll trail to be forfeited and collected in the same manner as prescribed in an act concerning mechanics' liens, approved December 17, 1864. And the tolls allowed by law to be collected upon any toll road, trail, ferry or bridge. shall be a lien upon any property passing over the same, to be collected as other liens are; *provided*, that no damages shall accrue at any time when tolls are not charged.

Enacting clause.

SEC. 2. This act shall take effect and be in force from and after its approval by the governor.

APPROVED *January* 10, 1866.

AN ACT

IN RELATION TO THE CONSTRUCTION OF BRIDGES, FERRIES, ROADS AND TRAILS.

Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:

SECTION 1, Right of way.
2. To locate by survey.
3. Intention to construct signified by notice.
4 County commissioners to grant licenses.
5. Rates of toll fixed how, by whom.
6 Applicant to give bond.
7. Duties of owners of ferries, penalty for neglect.
8 Rates of toll must be posted.
9. Rights and privileges of owners.
10 Penalty for keeping without license,
11. See act, 3rd session, page 180, approved January 2, 1866.
12. Privileges, extent of.
13 Taxes, failure to pay, penalty for.

Right of way

SECTION 1. It shall be lawful for any person or persons, company, corporation, or association, having the right of soil, or the consent of the owners thereof, or the right of way over any land, river, creek, swamp, ravine, crevice, or precipice, to construct wagon, plank or turnpike roads or trails, or to build bridges and establish ferries, as in this act provided, at his or their own expense, and he or they shall receive such compensation in tolls as may be reasonable, and in accordance with the provisions of this act.

To locate by survey.

SEC. 2. Whenever any person or persons, company, corporation, or association, shall be desirous of constructing any toll road or trail, pursuant to the provisions of this act, he or they shall locate the same by survey or otherwise, within properly designated bounds, and shall give notice of his or their intention to construct such road or trail, by posting up notices at each terminus of the proposed road or trail, and by advertising said notice in the nearest newspaper published in the Territory. Said notices shall, as nearly as may be, describe the character, location, and distance of such road or trail, and of the different points at which the same shall commence and terminate; and also, that the parties proposing to construct such road and trail, will apply to the board of county commissioners of the county or counties in which such road or trail is located, at their regular session, which shall commence not less than thirty days from the date and publication of such notices for a license, fixing the rates of toll to be collected upon such road or trail. The board of commissioners shall read said application and make a record thereof in their record of proceedings, and upon the second day of their next regular term said petition shall be taken up and granted or rejected as shall by said board be thought proper. All licenses granted in pursuance of this section shall continue in force for a term to be fixed by the board of county commissioners, not exceeding five years.

Intention to construct signified by notice.

SEC. 3. Whenever any person or persons, company, corporation, or association, shall be desirous of constructing any bridge, or establishing any ferry over or across any river, lake, creek, or stream, he or they shall signify such intention by posting up notices in at least three public places in the neighborhood where the bridge or ferry is proposed to be kept, and by advertising such notice in some newspaper published nearest to the place of such location. Said notice shall distinctly state that the parties proposing to establish such bridge or ferry, will apply for a license to the board of county commissioners of the county or counties in which such bridge or ferry is located, at their regular session, which shall commence not less than thirty days from the date and publication of said notice.

County commissioners to grant licenses.

SEC. 4. The board of county commissieners of any county in this Territory shall have authority to grant a license or licenses to any person or persons, company, corporation, or association entitled to, and applying therefor, under the provisions of this act, upon being satisfied that any such toll road, trail, bridge or ferry, for which a license is requested, is necessary and will subserve the interests of the public, at the place of such location or point applied for; *provided*, that no license shall continue in force for a longer term than one year;

and, *provided*, further, that whenever a license shall have expired, and application be made for a renewal thereof, the same may be granted or renewed without previous notice or petition.

Rates of toll fixed how, by whom.

SEC. 5. The board of county commissioners of each county shall fix and regulate the rates of toll for all franchises granted by the provisions of this act within the limits of their respective counties, having due regard to the cost of construction, magnitude of structure and expenses incident thereto, in keeping the same in good repair. The board of commissioners shall also tax such sum as may appear reasonable, not less than twenty-five dollars nor more than two hundred dollars per annum for each license granted; and the person or parties to whom such license shall be granted shall pay to the county treasurer the tax for one year in advance, taking his receipt therefor, and upon the production of such receipt, the clerk of the board of commissioners shall issue such license, with a statement of the rates of toll as fixed, under seal of the board of commissioners.

Applicants to give bond,

SEC. 6. Every person, company, corporation, or association, applying for a license to keep a toll road, trail, bridge, or ferry, shall, before the same is issued, enter into a bond with one or more sureties, to be approved by the clerk of the board of commissioners in any sum not less than one hundred, nor more than one thousand dollars, conditioned that such person, company, corporation or, association, will keep said road, trail, bridge, or ferry, in all respects, according to law; and if default shall, at any time, be made in the condition of such bond damages, not exceeding the penalty, may be recovered by any person aggrieved, before any court having competent jurisdiction.

Duties of owners of ferries, penalty for neglect.

SEC. 7. Every person, company, corporation, or association, obtaining a license to keep a ferry, shall provide and keep in good repair the necessary boat or boats for the safe conveyance of all persons and property, and shall furnish the necessary oars and implements, and keep a sufficient number of skillful and discreet men to manage said boats, and shall at all times keep the place of embarking and landing in good order and repair, and shall also give constant and diligent attention to such ferry during the hours of daylight, and shall, moreover, at any hour in the night, if required, except in cases of evident danger, give passage to all persons requiring the same, on the payment of double the rates of ferriage payable in the daytime: and if he or they shall at any time neglect or refuse to give passage to any person or his proprty, as herein provided, he or they shall forfeit and pay to the party aggrieved, for every such offense, a sum not less than twenty-five nor more than one hundred dollars, to be recovered before any justice of the peace having jurisdiction, and shall, moreover, be liable in an action at law for any special damages such person may have sustained by reason of such neglect or refusal; but no forfeiture or damages shall be recovered when it shall be manifestly unsafe or hazardous to convey such person over such stream, by reason of any storm, flood or ice nor shall any keeper of a ferry be conpelled to give passage to any person or property until the fare or toll, chargeable by law, shall have been fully paid or tendered to such keeper.

SEC. 8. All persons who shall have obtained a license to keep any toll road, trail, bridge or ferry, under the provisions of this act, shall post up and keep in some conspicuous place at each end of said bridge, trail or road, or near the landing of such ferry, a written or printed list of the rates of charges, in a plain and legible style, so that the same may be easily read; and if at any time such keeper shall neglect or refuse to post up and keep such list, it shall not be lawful to charge or take any toll at such road, trail, bridge, or ferry during the time of such delinquency.

SEC. 9. Any and all persons who shall have received a license to keep a bridge or ferry, by virtue of this act shall have the exclusive privilege of transporting all persons and property over or across the place or stream where such bridge or ferry is located, and shall be entitled to the fare arising by law therefrom, and shall be protected in such privilege within well established bounds, not to exceed two miles above and two miles below the point of location of such bridge or ferry: *Provided*, that nothing herein contained shall be so construed as to prevent any person from crossing or passing over any place or stream within such bounds, free of charge, at certain seasons of the year when it shall not be necessary to use such bridge or ferry.

SEC. 10. Any and all persons who shall keep, or attempt to keep, any toll road, trail, bridge or ferry, and receive toll or pay therefor, without first obtaining a license for the same, shall pay a fine of not less than fifty dollars for each offense, for the benefit of the common school fund, and for which suit may be instituted by any aggrieved party, before any justice of the peace having proper jurisdiction.

SEC. 11. Whenever any toll road or trail shall be constructed partly in one county and partly in another, and whenever any bridge or ferry shall be established over any stream or water course which divides one county from another, the party desiring a license to keep and maintain such toll road, trail, bridge or ferry shall apply to the board of county commissioners of each county respectively interested therein, and shall pay a relative proportion of such lisence tax to the respective county treasurers, as in this act provided, and it shall be the duty of the board of commissioners sitting at the county seat nearest to the terminus of such road or trail, or location of such bridge or ferry, to determine the total amount of such license tax the person or paties making such application shall be required to pay.

SEC. 12. All grants charters or franchises, by virtue of this act, to individuals or companies to construct roads and trails, shall include the right of way over the lands, water courses, or premises, so far as the same may be necessary to enable the party or parties receiving such charter, franchise, or grant, to carry into effect the purposes and objects of such charter, franchise or grant: *Provided*, the same shall in no case conflict with the vested rights of others.

SEC. 13. If any person or party licensed to keep a toll road, trail, bridge, or ferry, under the provisions of this act, shall fail to pay the tax or taxes assessed thereon. when due, or shall not provide for and keep the same in good and complete repair, necessary for the safe travel and conveyance of persons and property, or shall abandon the same for the space of sixty days, it shall be lawful for the board of county commissioners of the proper county, on complaint being made in writing, to summon the person or party licensed to keep such road, trail, bridge, or ferry, to show cause why such license should not be revoked, and to decide thereon according to the testimony adduced, and the laws of this territory; which decision, when made, shall be valid to all intents and purposes, but subject to appeal, as in other cases, to the district court.

SEC. 14. This act to take effect and be in force from and after its approval by the governor.

APPROVED, December 20th, A. D. 1864.

AN ACT

PROVIDING FOR THE TAKING EFFECT OF CERTAIN ACTS; FOR CONTINUING IN FORCE CERTAIN ACTS; FOR REPEALING CERTAIN ACTS; FOR THE APPOINTMENT OF A REVISORY COMMISSION. AND DEFINING THEIR AUTHORITY AND DUTIES; AND MAKING AN APPROPRIATION FOR THE PAYMENT OF THE PRINTING AND PUBLISHING OF THE CODE PROVIDED FOR BY LAW; AND FOR THE DISTRIBUTION OF THE STATUTES OF IDAHO

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. When acts of Legislture to take effect
2. Revisory committee, authority and duties of.
3. Ibid.
4. Acts not designated repealed.
4. Private acts continued in force, when.
6. When commission to complete duty.
7. Number to be printed; distribution of.
8. How and when to be transmitted.
9. Appropriation for printing, conditions of.
10. Repealing clause.

When acts of Legislature to take effect.

SECTION 1. That all acts of the Legislative Assembly of the Territory of Idaho, passed and approved at the present session, and which do not provide for the time of the taking effect thereof, be, and the same are hereby declared to be in full force and effect on and after 12 o'clock (noon) on the first day of July, A. D., 1875, and shall be printed and published in the code, as provided for at the present session.

Revisory committee, authority and duties of.

SEC. 2. That Hon. H. E. Prickett, R. Z. Johnson and E. J. Curtis be and are hereby constituted and appointed a revisory commission, to do and perform the following duties, viz.: They shall have authority, and are hereby requested to revise all the acts passed at the present session of the Legislative Assembly, and correct on the enrolled bills thereof all clerical errors, errors of orthography, grammar and punctuation; to properly number all sections, and titles thereto; to correct any glossary or synopsis so as to make the same conform to the sections of acts; but, in no case, to alter or amend any act or part thereof, so as in any way to effect the intent and meaning thereof.

Ibid.

SEC. 3. That said commission are hereby further empowered and authorized to carefully examine each and every act of the Legislative Assembly of the Territory of Idaho, of a public character, passed at the first, second, third, fourth, fifth, sixth and seventh sessions thereof, and shall designate such as are not repealed, and not inconsistent or repugnant to any act or part of act passed at the present session, which act, so designated, shall be printed and published in a volume, with the acts, known as the code, as provided for at the present session; and such designated acts are hereby declared to be continued in force.

Acts not designated repealed.

SEC. 4. That all acts and parts of acts passed and approved at the first, second, third, fourth, fifth, sixth and seventh sessions of the Legislative Assembly of the Territory of Idaho of a public character, and not designated by the revisory commission as in section third of this act provided, be and the same are hereby repealed on and after 12 o'clock (noon) on the first day of July, A. D., 1875.

Private acts continued in force when.

SEC. 5. That all acts of a private character, passed by any session of the Legislative Assembly of the Territory of Idaho, and not repealed, are hereby declared to be continued in force; but shall not be published in the code.

When commission to complete duty.

SEC. 6. That the revisory commission aforesaid shall complete their duties under this act, on or before the first day of March, A. D., 1875; and no compensation shall be paid to said commission or to any member thereof, for any such duty or services done or rendered by virtue of the provisions of this act.

Number to be printed: distribution of.

SEC. 7. There shall be printed and published the number of five hundred volumes or copies of said code of laws, which shall be distributed as follows: One copy to each of the members of the Legislative Assembly of the Territory of Idaho at the present session; one copy to each of the county officers in the Territory; one copy to each of the district and territorial officers of Idaho Territory; one copy to each of the judges of the supreme court of the territory of Idaho; one copy to each of the heads of department of the general government; one copy to each of the States and Territories of the United States, and the balance to remain in the custody and possession of the Secretary of the Territory, subject to the disposition of the Legislative Assembly.

How and when to be transmitted

SEC. 8. The copies provided for in section seven of this act, for the county officers and members of the Legislative Assembly of the present session shall be forwarded by mail to the persons designated herein by the secretary of the Territory of Idaho, so soon as the same shall be printed and published and ready for distribution.

Appropriations for printing, conditions of.

SEC. 9. That for the printing and publication of the volume designated as the code, and as provided for by the present session of the Legislative Assembly, there shall be and is hereby appropriated out of any money in the territorial treasury, not otherwise appropriated, the sum of fourteen hundred dollars; for said sum or so much thereof as may be needed, the territorial controller shall issue a warrant on the territorial treasury in favor of the person who shall print and publish said volume; *provided*, that in case Congress shall make an appropriation sufficient to pay for the printing and publication of the volume aforesaid, no part of the sum hereby appropriated shall be drawn, and no warrant shall be issued therefor.

SEC. 10. All laws and Legislative enactments heretofore passed by the Legislative Assembly of the Territory of Idaho, regulating the distribution of the printed laws of Idaho, are hereby repealed.

SEC. 11. This act shall take effect and be in force from and after its passage.

APPROVED *January* 15, 1875.

APPENDIX.

The following is the title of the Acts of the Territory of Idaho not printed in this volume, from 1863 to 1875 inclusive, still in force:

1863-4—FIRST SESSION.

To incorporate the South Boise Wagon Road Company.
To authorize S. A. Woodward and L. P. Brown to construct and maintain a toll road from Brown's Mountain House, in Nez Perce County, to Florence, in Idaho county.

1864—SECOND SESSION.

To provide for the transcribing of the records of Owyhee County, now on the books of Boise County.
Locating the County Seat of Alturas County.
To change the name of Daniel Rothkoff to that of Daniel Roth.

1865-6—THIRD SESSION.

To remove the County Seat of Oneida County, in Idaho Territory.
To provide for the incorporation of the Territorial Agricultural Society.
For perfecting title to quartz claims in the County of Idaho.
To authorize the County Commissioners of Boise County to lay and collect a special tax. (For a redemption fund.)
To incorporate Boise City.
Concerning hogs running at large in Ada County.
Legalizing the records of Alturas and Boise Counties.
To authorize the County Commissioners of Alturas County to levy and collect a special tax. (For court house and County building fund.)
For the transcribing of the records of Boise and Alturas Counties.
To grant James H. Slater and his associates right for a water canal or ditch in Ada County.
To incorporate the Boise City Canal Company.
To incorporate the Oneida Wagon Road Company.
An act authorizing T. Stringham and others to build a Toll Road in Boise County.
Authorizing Henry Greathouse, Samuel Kelly and Thomas H Stringham to maintain and keep a Toll Road from Fort Boise to Moore's Creek.

To authorize Silas Skinner, Peter Donnelly and James Jourdan to establish and maintain a Toll Road from Ruby City, Owyhee County, I. T., to the Oregon line in Jourdan Valley.
To amend an act entitled an act to incorporate the South Boise Wagon Road Company.

1866-7—FOURTH SESSION.

To incorporate the town of Lewiston.
To amend an act entitled an act for the transcribing of the records of Boise and Alturas Counties.
To create the office of Tax-Collector for the collection of revenue in and for the County of Owyhee.
To amend an act entitled an act to incorporate Boise City, in Ada County.
To change the name of Silver City in Boise County to Banner City.
Relating to Hurdy Gurdy Dance Houses.
Supplementary to an act entitled an act to authorize the County Commissioners of Alturas County to levy and collect a special tax. (For court house and County building fund.)
Locating the County Seat of Owyhee County.
To change the name of Florence Adalaide Washburn to Florence Adalaide Hunt.

1868-9—FIFTH SESSION.

To provide for the redemption of warrants drawn on the Treasurer of Ada County, and for the payment of all the County expenses of Ada County.
To amend an act to incorporate Boise City in Ada County.
To amend an act supplementary to an act to authorize the County Commissioners of Alturas County to levy and collect special tax, (for court house and County building fund.)
To amend an act entitled an act for the transcribing the records of Boise and Alturas Counties.
To regulate the collection of revenue and to provide certain funds for the County of Owyhee.
To provide for the redemption of warrants drawn upon the treasurer of Boise County, and for the payment of all current expenses of Boise County.
To provide for the redemption of warrants drawn upon the Treasurer of Alturas County, and for the payment of all current expenses of said County.
To authorize the County Commissioners of Boise County to levy a special tax for County purposes.
Concerning religious, social, benevolent and learned associations.
For the removal of the County Seat of Idaho County.
To change the name of J. A. Busard to J. H. Benard.
To amend an act to authorize the County Commissioners of Boise County to levy and collect a special tax. (Redemption fund.
To change the name of Thomas Rogers to Edward Brooks.
To change the name of William Walker Stackpole to William Walker.

1870-1—SIXTH SESSION.

To provide for the disposal of lands in Boise City.

To provide for the redemption of the outstanding warrants, drawn upon the Treasurer of Boise County and for the payment of all current expenses of said county.

To validate the outstanding warrants of Ada County, drawn upon the hospital fund of said county, and providing for their redemption.

To provide for the redemption of the outstanding warrants drawn upon the Treasurer of Nez Perce County, and to provide for the payment of the County expenses of said County.

Relating to fences and trespass in Oneida County.

To provide for the levying and collecting of a hospital tax in Shoshone County.

To better define the line between the Counties of Owyhee and Oneida.

To exempt the Upper Weiser Valley from the provisions of an act concerning hogs from running at large in Ada County.

Authorizing the County Commissioners of Oneida County to levy a special tax for County purposes.

To amend an act to incorporate Boise City in Ada County.

Restricting the herding of sheep in the County of Oneida.

To amend an act providing for the redemption of warrants drawn upon the Treasurer of Alturas County.

To vacate a portion of Front Street in Boise City.

Relating to County Commissioners of Owyhee County.

To provide for paying warrants drawn on the forty-five per cent. fund of Idaho County.

Concerning the *bona fide* settler of Oneida County.

To vacate Idaho Street on the outskirts of Boise City.

To authorize the Commissioners of Alturas County to levy and collect a special tax for the purchase of fuel, lights and stationery.

To provide for the incorporation of the Turnverien Society in Boise City.

To dissolve the bonds of matrimony between May Augusta Chapman and George Chapman.

To change the name of Frances Hauber to Franz Joseph Hauber.

To amend an act to incorporate the Oneida Wagon Road Company.

Dissolving the marriage between Joseph H. Misner and Kate L. Misner.

To change the name Aaron Rothkoff to Aaron Roth.

1872-3—SEVENTH SESSION.

To provide for the disposal of the land in the city of Lewiston.

Prescribing the manner of levying and assessing the taxes in the counties of Ada, Owyhee, Lemhi and Oneida.

Relating to fences and trespasses in the counties of Nez Perce, Oneida and Idaho.

To amend an act to incorporate the Oneida Wagon Road Company.

Concerning roads and highways in Boise county.

Regulating the salaries and fees of certain officers in the county of Nez Perce.

Supplementary to an act to provide a uniform system of Territorial and County revenue, and for assessing and collecting the same.

To provide for the annual transfer of the money in the hospital funds of Alturas and Shoshone counties to other funds.

To dissolve the bonds of matrimony between Angeline Parker and Henry Parker.

To apportion the school fund of Boise county.
To incorporate Franklin City in Oneida County.
To provide for the publication of notice by the Territorial Treasurer for the resumption ~~of~~ outstanding Territorial warrants, and to provide a contingent fund therefor, and for the necessary stationery for his office.

1874-5—EIGHTH SESSION.

To repeal certain acts fixing the salaries and fees of certain officers of Boise County.
Supplementary to an act to provide for the disposal of lands in Boise City, Ada county.
To protect game in the Territory of Idaho.
To amend and repeal certain sections of an act to incorporate the town of Lewiston.
To amend an act for the redemption of outstanding warrants of Alturas county.
Authorizing the Board of Commissioners of Idaho county to grant aid in the construction of a wagon road in said county.
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To authorize the Commissioners of Ada county to build a bridge in said county.
To amend an act concerning roads and highways in Boise county.
Relating to common schools in Shoshone county.
To authorize and empower the Commissioners of Oneida county to construct and repair certain roads in said county.
For the protection of growing crops in the county of Ada.
To restrain the herding of sheep.
Regulating the salaries and fees of certain officers in Alturas county.
In relation to certain funds in Owyhee county.
Concerning toll roads, bridges and ferries in Ada county.
To amend an act regulating the fees and salaries of certain officers of Ada county.
To authorize the Commissioners of Owyhee county to cause to be transcribed and indexed certain records of said county.
To dissolve the marriage between Mary E. Lindner and Samuel Lindner.
To dissolve the marriage between Sarah A. Baldwin and James C. Baldwin.
To amend and extend an act concerning hogs found running at large in Ada county.
To dissolve the marriage between Ernestine Schnabel and Julia Schnabel.
Regulating fees and salaries of county officers in Nez Perce county.
Providing for the sale of county property in Shoshone, Nez Perce and Idaho counties.
To empower the Assessors of Owyhee county to collect taxes upon certain moveable personal property within said county.
To provide for the purchase, by the Territory, of the new compiled and Revised Code of Laws of Idaho Territory, and for the payment therefor.
To change the name of Kate Alexander and make her the heir of Orville P. and Rosanna C. Johnson and to make them her guardians.
To provide for the payment of newspapers furnished the Eighth Session of the Legislative Assembly.

To dissolve the marriage between Lydia Ann Patton and Green C. Patton.
Relating to the mileage of Sheriff in Owyhee county in criminal cases.
To dissolve the marriage between Cathrine More and David More.
To compensate William Frazer and B. G. Hooker for services rendered and expenses incurred, in the arrest and return of John Thomas.
To dissolve the marriage between L. P. Higbee and Sophia E. Higbee.
Defining the place of residence of the District Attorney of District number two.
To change the name of Carl Johan Brim Skoo to Charles Wilson.
To provide for the printing of certain Acts.
To amend an Act to incorporate Boise City in Ada county.
To provide for a jailor in the County of Owyhee.
Relating to the recording of quartz claims in Owyhee and Alturas counties, and fixing the fees therefor.

REFERENCES AND CORRECTIONS

OF ERRORS AS PRINTED IN THIS VOLUME.

Page 85,	Section 28,		add "when the summons is served by any other person, as above provided, which shall be returned to the office of the clerk from which it issued."
86,	35.	Line 2,	strike out the words "and copy of complaint."
88,	44.	2,	for "fifty" read "forty."
91,	61,	0,	for "denied" read "derived."
91,	62.	2,	for "intrinsic" read "extrinsic."
114,	163,	last,	for "off" read "or."
123,	204.	9.	from bottom of page, after the word "days," insert "after service of the amendments upon notice of five days."
141.	258.	4,	for "removal" read "reversal."
249,	60,	3,	from bottom, for "time" read "name."
354,	11.	8,	from top of page, for "ten" read "two."
554.	61,	24	from top of page, for "ten" insert "two."
636.	12.	3,	from bottom, for "some" read "extreme."

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